(3717)

HAND-BOOK

OF

SPECIAL PROCEDURES

OF THE

Courts of District and Subordinate Judges;

OR,

A COMPILATION OF SEVENTEEN VERY IMPORTANT AND USEFUL ENACTMENTS,

WITH

AN INDEX TO EACH ACT, SEPARATELY.

BY

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JUDGE OF THE SMALL CAUSE COURT OF ARRAH AND SUBORDINATE JUDGE OF ZILLAH SHAHABAD.

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GENERAL SECRETARIE

PREFACE.

Under Section xxvii., Act VI. of 1871, the District Judge is authorized, with the sanction of the High Court, to transfer to a Subordinate Judge certain classes of cases. The compiler has therefore, for ready reference, brought together in one handy volume the aforesaid Civil Courts Act and the rules and enactments so made applicable to Subordinate Judges, marginal notes and appropriate indexes being attached thereto. To add to the utility of this work, the new Registration Act, the Indian Limitation Act, the General Stamp Act, and the Court Fees' Act, being important enactments and daily called into requisition, have also been incorporated in this volume.

It is to be hoped that this compilation, which contains seventeen important enactments as particularized in the table of contents, will supply a desideratum the want of which has long been felt, and obviate the necessity of constant reference to ponderous volumes of Acts and *Official Gazettes*, which are expensive to purchase, cumbrous to carry, and tedious to refer to.

In order to preserve the utility of this book, it may be continued to be interleaved by purchasers, as has been done at the end of each Act, for insertion of such notes as may be found necessary, consequent on amendment of existing law and passing of decisions by the Hon'ble the High Court having the force of precedents. Those already passed on every subject will be found under appropriate headings in the copious *Indian Digest* by Messrs. Cowell and Woodman, which is one of the right-hand books of every student and practitioner; it has been therefore deemed unnecessary to refer to them in this compilation.

The compiler has not endeavoured to epitomise the legislative enactments given in this volume, as it is more satisfactory to possess the original letter of the law, and no summary or analysis can meet the varied requirements of the legal public. To abbreviate original law is to weaken its force, for the wording of the law complete in itself will not admit of perfect condensation. To cite the words of the law is to aim at perfection, the compiler therefore refrains from abridgment.

Having found the present arrangement most useful in practice, the compiler will be amply rewarded should this publication prove equally serviceable to others. He has endeavoured to utilize his leisure hours, and commits this hand-book to the Bench, the Bar, and the Public, in the hope that it will receive the meed of their approbation.

While this compilation was passing through the press, the compiler was induced, at the suggestion of his legal friends, to include in it the *Indian Succession Act X. of* 1865; it had been omitted in the first instance, because, like the Civil and Criminal Procedures, it forms a code by itself, *as applicable to all British subjects*, excepting Hindús, Muhammadans and Buddhists.

It is to be hoped that this addition will enhance the utility of this hand-book.

In order to render this little book equally useful to the Hindús, Jainas, Sikhs and Buddhists of Bengal, Madras and Bombay, the Governor-General in Council's Act XXI. of 1870, relative to their Wills and probates of Wills, has also been placed in the Addenda, making the seventeenth enactment in the volume. It need scarcely be observed that certain Sections of "*the Indian Succession Act*" have been extended by this Act (XXI. of 1870) to the aforesaid classes of the people of India.

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THE

Regulations and Enactments of the Bengal Code

OR

THE LEGISLATIVE COUNCIL OF INDIA.

REGULATION V. OF 1799.

A Regulation to limit the interference of the Zillah and City Courts of Dewanny Adawlut in the execution of wills and administration to the estates of persons dying intestate: passed by the Vice-President in Council on the 3rd May 1799.

I.—Doubts having been entertained to what extent, and in what manner, the Judges of the Zillah and City Courts of Dewanny Adawlut in the provinces of Bengal, Behar, Orissa, and Benares are authorized to interfere in cases wherein the inhabitants of the above provinces may have left wills at their decease, and appointed executors to carry the same into effect, or may have died intestate, leaving an estate real or personal; with a view to remove all doubts on the authority of the Zillah and City Courts in such cases, and to apply thereto, as far as possible, the principle prescribed in Section xv. of Regulation IV., 1793, *viz.*, that in suits regarding succession and inheritance the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, be the general rules for the guidance of the Judges, the Vice-President in Council has passed the following Regulation, to be considered in force from the period of its promulgation in the above provinces respectively :—

Estates of Hindoos, Mahomedans, and others, not being disqualified landholders, leaving wills.

II.*—In all cases of a Hindoo, Mussulman, or other person subject to the jurisdiction of the Zillah and City Courts, having at his death left a will and appointed an executor or executors to carry the same into effect, and in which the heir to the deceased may not be a disqualified landholder, subject to the superintendence of the Court of Wards under Regulation X., 1793, or any other Regulation relative to the jurisdiction of the Court of Wards, the executors so appointed are to take charge of the estate of the deceased, and proceed in the execution of their trust according to the will of the deceased and the laws and usages of the country, without any application to the Judge of the Dewanny Adawlut or any other officer of Government for his sanction; and the Courts of Justice are prohibited to interfere in such cases, except on a regular complaint against the executors for a breach of trust or otherwise, when they are to take cognizance of such complaint in common with all others of a civil

* Partially repealed by Section i., Act XL., 1858.

nature, under the general rule contained in Section viii. of Regulation III., 1793, and proceed thereupon according to the Regulations, taking the opinion of their law officers upon any legal exception to the executors, as well as upon the provision to be made for the administration of the estate in the event of the appointed executor being set aside, and generally upon all points of law that may occur; with respect to which the Judge is to be guided by the law of the parties as expounded by his law officers, subject to any modifications enacted by the Governor-General in Council in the form prescribed by Regulation XLI., 1793.

Estates of persons dying intestate.

III.*—In case of a Hindoo, Mussulman, or other person subject to the jurisdiction of the Zillah or City Courts dying intestate, but leaving a son or other heir, who by the laws of the country may be entitled to succeed to the whole estate of the deceased, such heir, if of age and competent to take the possession and management of the estate, or if under age or incompetent, and not under the superintendence of the Court of Wards, his guardian, or nearest of kin, who by special appointment or by the law and usage of the country may be authorized to act for him, is not required to apply to the Courts of Justice for permission to take possession of the estate of the deceased as far as the same can be done without violence; and the Courts of Justice are restricted from interference in such cases, except a regular complaint be preferred, when they are to proceed thereupon according to the general Regulations.

If there be more heirs than one to the estate of an intestate.

IV.—If there be more heirs than one to the estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common manager, they are at liberty to take possession, and the Courts of Justice are restricted from interference, without a regular complaint, as in the case of a single heir; but if the right of succession to the estate be disputed between several claimants, one or more of whom may have taken possession, the Judge, on a regular suit being preferred by the party out of possession, shall take good and sufficient security from the party or parties in possession for his or their compliance with the judgment that may be passed in the suit; or in default of such security being given within a reasonable period, may give possession, until the suit may be determined, to the other claimant or claimants who may be able to give such security, declaring at the same time that such possession is not in any degree to affect the right of property at issue between the parties, but to be considered merely as an administration to the estate for the benefit of the heirs, who may, on investigation, be found entitled to succeed thereto.

In what cases Judge may appoint an administrator for the care and management of the estate of an intestate.

V.†—In the event of none of the claimants to the estate of a person dying intestate being able to give the security required by the preceding Section, and in all cases wherein there may be no person authorized and willing to take charge of the landed estate of a person deceased, the Judge within

* Partially repealed by Section i., Act XL., 1858.

† Modified by Regulation V., 1827.

whose jurisdiction such estate may be situated (or in which the deceased may have resided, or the principal part of the estate may lie, in the event of its being situated within two or more jurisdictions) is authorized to appoint an administrator for the due care and management of such estate, until, in the former case, the suit depending between the several claimants shall have been determined, or, in the latter case, until the legal heir to the estate or other person entitled to receive charge thereof as executor, administrator, or otherwise shall attend and claim the same; when, if the Judge be satisfied that the claim is well founded, or if the same be established after any inquiry that may appear necessary, the administrator appointed by the Court shall deliver over the estate to him with a full and just account of all receipts and disbursements during the period of his administration.

Security to be taken from, and allowances paid to, administrators.

VI.*—In all instances of an administrator being appointed under this Regulation, he is, previous to entering upon the execution of his office, to give good security for the faithful discharge of his trust in a sum proportionate to the extent thereof; and the Judge appointing him is authorized to fix for him (subject to the approbation of the Court of Sudder Dewanny Adawlut, to whom a report is to be made in such instances) an adequate personal allowance to be paid out of the proceeds of the estate, and to be a percentage thereupon, after deducting the expenses of management.

Judges how to proceed in cases of persons dying intestate, leaving personal property to which there may be no claimant.

VII.†—The Judges of the Zillah or City Courts, on receiving information that any person within their respective jurisdictions has died intestate, leaving personal property, and that there is no claimant to such property, are to adopt such measures as may be necessary for the temporary care of the property, and to issue an advertisement in the current languages of the country, requiring the heir of the deceased, or any person entitled to receive charge of his effects, to attend for this purpose. Such advertisement to be published on the spot where the property was found, at the Dewanny Adawlut cutcherry of the zillah or city, and, if ascertainable, at the dwelling-place of the deceased, or, if the deceased were an European, in the *Calcutta Gazette;* after which should any person attend and satisfy the Judge of his title to the property or to receive charge thereof as executor, administrator, or otherwise, the same is to be delivered up to him, on repayment of any necessary expense incurred in the care of it. Should no claim be preferred within the twelve months next ensuing, an inventory of the property and report of the circumstances of the case is to be transmitted to the Governor-General in Council for his orders.

Regulation not to limit or alter jurisdiction of Court of Wards.

VIII.—Nothing in this Regulation is to be understood to limit or alter the jurisdiction of the Court of Wards in the appointment of managers or guardians for the disqualified landholders, described in Regulation X., 1793, or in any case wherein a special power may be vested in the Court of Wards by the above or any other Regulation.

* Modified by Reg. V., 1827. † Modified by Sec. vi., Reg. XV., 1806, which is repealed by Act XVII. of 1862.

REGULATION V. OF 1827.

A Regulation for modifying the rules at present in force for the management of estates under attachment by orders of the Courts of Justice in certain cases: passed by the Governor-General in Council on the 27th December 1827.

Preamble

I.—Whereas it is expedient in all cases of the attachment of landed property under orders of the Courts of Justice, that the management of the estate attached should be placed under the superintendence of the Collectors of land revenue, the following rules have been enacted by the Governor-General in Council, to be in force from the date of their promulgation throughout the territories immediately subject to the Presidency of Fort William :—

Modification of certain Regulations regarding the management of estates under attachment

II.—The rules contained in Sections v. and vi., Regulation V., 1799, and Clauses five and six, Section xvi., Regulation III., 1803, and Sections xxvi. and xxvii., Regulation V., 1812, and Clause three, Section v., Regulation VI., 1813, regarding the administration and management of estates under orders of the Zillah and City Courts, are hereby declared subject to the following modifications :—

Rules for the issue of precept for holding estates under attachment and for appointing managers.

III.—Whenever the Zillah and City Courts may deem it just and proper, under the provisions of the several Regulations above mentioned, to provide for the administration or management of landed property, the Court shall issue a precept to the Collector of land revenue of the district wherein the estate may be situated, directing him to hold the estate in attachment, and to appoint a person for the due care and management of the estate, under good and adequate security for the faithful discharge of the trust, in a sum proportionate to the extent thereof; provided, however, that if any person holding an interest in the estate shall be dissatified with the selection made by the Collector of the individual to perform the duty in question, or with the conduct of the manager at any time after his appointment, it shall be competent to such person to represent his objections to the Board of Revenue, and the Board will either confirm the manager chosen, or order the Collector to appoint another person, as on consideration of the circumstances of the case may appear reasonable and proper.

Precept shall specifically state the property to be included in the attachment

IV.—The precept of the Zillah or City Court above mentioned shall state specifically the property to be included in the attachment, and the attachment shall not be withdrawn without a further precept from the Court to that effect.

ACT XIX. OF 1841.

An Act for the protection of movable and immovable property against wrongful possession in cases of successions.

I.—Whereas much inconvenience has been experienced, where persons have died possessed of movable and immovable property, and the same has been taken upon pretended claims of right by gift or succession; the difficulty of ascertaining the precise nature of the movable property in such cases, the opportunities for misappropriating such property and also the profits of real property, the delays of a regular suit when vexatiously protracted, and the inability of heirs when out of possession to prosecute their rights, affording strong temptations for the employment of force or fraud in order to obtain possession. And whereas, from the above causes, the circumstance of actual possession, when taken upon a succession, does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit, though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit. And whereas such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession, will be too tardy a remedy for obviating them all, especially as regards movable property. And whereas it may be expedient, prior to the determination of the summary suit, to appoint a curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste or neglect, and where such appointment will, in the opinion of the authority making the same, be beneficial under all the circumstances of the case. And whereas it will be very inconvenient to interfere with successions to estates by the appointment of curators, or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by, or on the behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit :—

Whenever a person dies, leaving property, the person claiming to succeed may apply for relief to the Judge, either in case of actual or of apprehended possession by another.

It is hereby enacted, that whenever a person dies leaving property, movable or immovable, it shall be lawful for any person claiming a right by succession thereto or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

II.—And it is hereby enacted, that it shall be lawful for any agent, relative, or near friend, or for the Court of Wards in cases within their cognizance, in the event of any minor, disqualified, or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.

Case of minor, disqualified or absent person, being entitled to succession.

Judge to enquire into certain special points.

III.—And it is hereby enacted, that the Judge to whom such application shall be made, shall, in the first place, enquire by the solemn declaration of the complainant, and by witnesses and documents at his discretion, whether there be strong reasons for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled, and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made *bonâ fide*.

If Judge be satisfied, he shall cite the person complained of and deliver possession, but may appoint an officer to take an inventory.

IV.—And it is hereby enacted, that in case the Judge shall be satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and after the expiration of a reasonable time shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned) and shall deliver possession accordingly; Provided always, that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

If there appear danger of misappropriation of property before determination of summary suit, the Judge may appoint curators, till determination of summary suit.

V.—And it is hereby enacted, that in case it shall further appear, upon such application and examination as aforesaid, that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession, or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he be the lawful owner; it shall be lawful for the Judge to appoint one or more curators with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof: provided always, that, in the case of land, the Judge may delegate to the Collector or to his officer the powers of a curator, and also that every appointment of a curator in respect of any property be duly published.

Curator to take possession either generally or under limitation. Party in possession may retain possession conditionally.

VI.—And it is hereby enacted, that the Judge shall have power to authorize such curator either to take possession of the property generally, or until security be given by the party in possession, or until inventories of the property shall have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession. Provided always, that it shall be entirely discretionary with the Judge whether he shall allow the party in possession to continue in such possession on given security or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories or the securing of deeds or other effects.

VII.—And it is hereby enacted, that the Judge shall exact from the curator security for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter mentioned, and may authorize him to receive out of the property such remuneration as shall appear reasonable, but in no case exceeding five per centum on the personal property and on the annual profits of the real property. All surplus monies realized by the curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit. Provided always, that although security shall be required from the curator with all reasonable despatch, and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

Curator to give security. His remuneration not to exceed five per cent. on personalty and annual profits of realty.

VIII.—And it is hereby enacted, that, where the estate of the deceased person shall consist wholly or in part of land paying revenue to Government, in all matters regarding the propriety of citing the party in possession, of appointing a curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency the Judge may proceed, in the first instance, without such report, and he shall not be obliged to act in conformity thereto, but in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the Court of Sudder Dewanny Adawlut, and the Court of Sudder Dewanny Adawlut, if they shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

If the property consist of land paying revenue, Judge shall demand a report from the Collector.

IX.—And it is hereby enacted, that the curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and that all suits may be instituted or defended in the name of the curator on behalf of the estate: provided that an express authority shall be requisite in the sunnud of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

Curator to be subject to Judge's orders regarding suits, and may give discharges for debts or rents, if expressly authorized to collect them.

X.—And it is hereby enacted, that, pending the custody of the property by the curator, it shall be lawful for the Judge to make such allowances to parties having a *primâ facie* right thereto, as, upon a summary investigation of the rights and circumstances of the parties interested, he shall consider that necessity may require, taking at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

Pending custody by curator, Judge may order allowances to parties having an apparent right.

XI.—And it is hereby enacted, that the curator shall file monthly accounts in abstract, and at the period of every three months, if his administration last so long, and upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the Judge.

Curator to file accounts monthly and quarterly.

Any interested person may inspect curator's accounts, and keep a separate account.

XII.—And it is hereby enacted, that the accounts of any such curator as is above described shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such curator. And if it be found that the accounts of any such curator are in arrear, or if they shall be erroneous or incomplete, or if the curator shall not produce them whenever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding 1,000 Rupees for every such default.

No second curator to be appointed unless the first be appointed only for part of the property.

XIII.—And it is hereby enacted, that, after the Judge of any district shall have appointed any curator, such appointment shall preclude the Judge of any other district within the same Presidency from appointing any other curator, provided the first appointment be in respect of the whole of the property of the deceased; but if the appointment be only in respect of a portion of the property of the deceased, this shall not preclude the appointment within the same Presidency of another curator in respect of the residue or any portion thereof: provided always that no Judge shall appoint a curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act, before another Judge: and provided, further, that if two or more curators be appointed by different Judges for several parts of an estate, it shall be lawful for the Sudder Dewanny Adawlut to make such order as it shall think fit for the appointment of one curator of the whole property.

Application for a curator must be made within six months.

XIV.—And it is hereby provided, that this Act shall not be put in force, unless the aforesaid application to the Judge be made within six months of the decease of the proprietor, whose property is claimed by right in succession.

Curator not to be appointed when the deceased has given legal directions for the possession of his property after death.

XV.—And it is hereby enacted, that this Act shall not be put in force to contravene any public act of settlement. Neither in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his decease, in the event of minority or otherwise, in opposition to such directions; but, in every such case, so soon as the Judge having jurisdiction over the property of a deceased person, shall be satisfied of the existence of such directions, he shall give effect thereto.

In the case of minors, &c., Judge to invest the Court of Wards with the curatorship without security.

XVI.—And it is hereby provided, that this Act shall not be put in force for the purpose of disturbing the possession of the Court of Wards of any Presidency; and in case a minor, or other disqualified person, whose property shall be subject to the Court of Wards, shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession, and also appoint a curator, shall invest the Court of Wards with the curatorship of the estate, pending the suit, without taking such security as aforesaid, and in case the minor or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

XVII.—And it is hereby provided, that nothing in this Act contained shall be any impediment to the bringing of a regular suit, either by the party whose application may have been rejected, before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act.

Rejected applicant or party evicted may bring a regular suit.

XVIII.—And it is hereby enacted, that the decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the actual possession; but that for this purpose it shall be final, not subject to any appeal or order for review.

Judge's decision to be final only as to the actual possession.

XIX.—And it is hereby enacted, that it shall be lawful for the Governments of the respective Presidencies to appoint public curators for any district or number of districts. And the Judge having jurisdiction shall nominate such public curator or curators in all cases where the choice of a curator is left discretionary with him under preceding provisions of this Act.

Government may appoint public curators for any number of districts.

XX.—Repealed by Act VIII., 1855 (an Act to amend the Law relating to the office and duties of Administrator General).

ACT XXVI. OF 1854.

An Act for making better provision for the education of male minors subject to the superintendence of the Court of Wards.

Whereas the existing laws are found insufficient to ensure the proper education of male minors subject to the superintendence of the Court of Wards, and it is expedient to make further and better provision for the education of such persons; It is enacted as follows:—

General control and superintendence of the education of male minor wards vested in Collectors of Revenue.

I.—The general superintendence and control of the education of every male minor, whose property has been, or shall be brought under the management of the Court of Wards, in and for any part of the Presidency of Fort William, by virtue of any Act or Regulation, which now is, or hereafter shall be in force, is hereby vested in the Collector of Revenue, acting under the said Courts of Wards, in the zillah or district wherein such minor's estate is situate; or, if such minor is possessed of immovable property in different districts, in such one of the Collectors of Revenue of such districts as the said Court of Wards shall select.

Collectors to have power to cause male minor wards to be educated at any school or college.

II.—It shall be lawful for every Collector of Revenue, in whom the superintendence of the education of any minor is vested by this Act, to direct that such minor shall reside, either with or without his guardian, at the sudder station of the district, or at any other place within the said Presidency, and shall attend, for the purposes of education, such school or college as to the said Collector may seem expedient; and to make such provision as may be necessary for the proper care and suitable maintenance of the said minor whilst attending such school or college.

Or, in certain cases to cause such wards to be educated privately.

III.—If it shall appear to the Collector inexpedient to place any such minor at a school or college, he shall, if the proceeds of the estate are sufficient for that purpose, cause such minor to be educated by a private tutor, properly qualified, either at the family residence of such minor, or at the sudder station, or elsewhere within the said Presidency; and in that case also the Collector shall have power to determine from time to time the place of residence of such minor, and to make such provision as may be necessary for his proper tuition and maintenance during the period of his education.

Charges and expenses incurred under this Act to be paid out of the profits of the ward's estate.

IV.—All charges and expenses which may be incurred on account of any male minor ward under the provisions of this Act, for college or school fees, or for other charges of tuition or education, or by reason of his residence in any place other than his own home or otherwise, shall be defrayed from the profits of his estate in the same manner as other expenses incurred under the authority, or with the sanction of the Court of Wards.

V.—It shall be lawful for the Court of Wards, on the application of a Collector, to remove from office any guardian who shall neglect or refuse to obey, or shall evade compliance with any orders passed, or directions given by such Collector under the provisions of this Act, and to cause a new guardian to be appointed in his place, whether the person so removed shall have been first invested with the guardianship of the minor upon the nomination of a Collector acting under the Court of Wards, or by a testamentary appointment confirmed by the Court of Wards; and if, in any such case, the guardian to be removed shall be also the manager of the minor's estate, it shall be lawful for the Court of Wards at its discretion, either to remove him from both the said offices, or to continue him in that of manager only.

Court of Wards to have power to remove guardians for disobedience to orders passed by a Collector under this Act.

VI.—The guardian so removed shall, notwithstanding his removal, continue liable to account to the Collector for his receipts and disbursements during the period of his guardianship: and every guardian appointed in the place of a guardian so removed shall be chosen in the same way, and shall have the same rights and powers, and be subject to the same responsibilities as persons originally appointed to be guardians of minors by a Collector of Revenue acting under the Court of Wards.

Continued liability of guardian removed: powers and responsibilities of new guardian.

VII.—The right to the custody of the person of any male minor, whose property is under the management of the Court of Wards, is hereby vested in the person appointed with the sanction of the Court of Wards, either originally, or upon the removal of a former guardian, to be the guardian of such minor, or, in the absence of any such person, in the Collector of Revenue having the superintendence of the education of such minor under the provisions of this Act.

The right to the custody of the person of a male minor to be vested in guardian appointed by the Court of Wards, or, failing him, in the Collector.

VIII.—All orders and proceedings of a Collector under the provisions of this Act, shall be subject to the revision of the Court of Wards, and every person aggrieved by any such order or proceeding may prefer an appeal therefrom to the Commissioner of Revenue acting as a Court of Wards in and for the division to which such Collector belongs.

Appeal from the orders of a Collector to lie to Commissioner of Revenue acting as a Court of Wards.

ACT XXXV. OF 1858.

An Act to make better provision for the care of the estates of lunatics not subject to the jurisdiction of the Supreme Courts of Judicature.

Whereas it is expedient to make better provision for the care of the estates of lunatics not subject to the jurisdiction of the Supreme Courts of Judicature; and to prescribe general rules by which the state of mind of persons not subject to such jurisdiction, who are alleged to be lunatic, may be enquired into and ascertained; It is enacted as follows:—

Regulations repealed.

I.—So much of Section v. Regulation X. 1793, of Section ix. Regulation LII. 1803, of Regulation I. 1800, and of Section xxix. Regulation VIII. 1805, (extended to Benares by Section ii. Regulation VI. 1822), of the Bengal Code; and so much of Sections vi. and vii. Regulation V. 1804, and of Sections xx. and xxii. of the said Regulation (as modified by Section iii. Regulation X. 1831), of the Madras Code, as relate to lunatics or idiots—are hereby repealed.

Civil Court on application may institute enquiry, when a person possessed of property is alleged to be a lunatic.

II.—Whenever any person not subject to the jurisdiction of the Supreme Courts, who is possessed of property, is alleged to be a lunatic, the Civil Court within whose jurisdiction such person is residing may, upon such application as is hereinafter mentioned, institute an enquiry for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs.

Application by whom to be made.

III.—Application for such enquiry may be made by any relative of the alleged lunatic or by any public curator appointed under Act XIX. of 1841, or by the Government pleader, or, if the property of the alleged lunatic consist in whole or in part of land, or any interest in land, by the Collector of the district in which it is situate. If the property or any part thereof be of such a description as by the law in force in any Presidency where such property is situate would subject the proprietor, if disqualified, to the superintendence of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

Notice of enquiry to be given to lunatic.

IV.—When the Civil Court is about to institute any such enquiry as aforesaid, it shall cause notice to be given to the alleged lunatic of the time and place at which it is proposed to hold the enquiry. If it shall appear that the alleged lunatic is in such a state that personal service on him would be ineffectual, the Court may direct such substituted service of the notice as it shall think proper. The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic.

Court may re-

V.—The Civil Court may require the alleged lunatic to attend at such

convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic. The Court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

quire attendance of, and may authorize persons to have access to, lunatic.

VI.—The attendance and examination of the alleged lunatic under the provisions of the last preceding Section shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

Rules respecting attendance and examination, where the alleged lunatic is a woman of rank.

VII.—The Civil Court, if it think fit, may appoint two or more persons to act as assessors to the Court in the said enquiry. Upon the completion of the enquiry, the Court shall determine whether the alleged lunatic is or is not of unsound mind, and may make such order as to the payment of the costs of the enquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic, if he be adjudged to be of unsound mind, or otherwise, as it may think proper.

Appointment of assessors. Order of Court.

VIII.—If the alleged lunatic reside at a distance of more than fifty miles from the place where the Civil Court to which the application shall have been made is held, the said Court may issue a commission to any subordinate Court, to make the enquiry, and thereupon the said subordinate Court shall conduct the enquiry in the manner hereinbefore provided. On the completion of the enquiry the subordinate Court shall report its proceedings with the opinions of the assessors, if assessors have been appointed, and its own opinion on the case; and thereupon the Civil Court shall make such order in the case as it may think proper.

Issue of commission to a subordinate Court. Report of subordinate Court. Order of Civil Court.

IX.—When a person has been adjudged to be of unsound mind and incapable of managing his affairs, if the estate of such person or any part thereof consist of property which by the law in force in any Presidency subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the Court of Wards shall be authorized to take charge of the same. In all other cases, except as otherwise hereinafter provided, the Civil Court shall appoint a manager of the estate. Any near relative of the lunatic or the public curator, or, if there be no public curator, any other suitable person, may be appointed manager.

Management of lunatic's estate, if subject to Court of Wards, and in other cases. Who may be appointed manager.

X.—Whenever a manager of the estate of a lunatic is appointed by the Civil Court, the Court shall appoint a fit person to be guardian of the person of the lunatic. The manager, unless he be the public curator, may be appointed guardian. Provided always, that the legal heir of the lunatic shall not in any case be appointed guardian of his person.

Appointment of guardian by Civil Court.

Court may direct Collector to take charge of lunatic's estate, if not subject to Court of Wards. Proceedings of Collector subject to control.

XI.—If the estate consist in whole or in part of land or any interest in land not subject to the jurisdiction of the Court of Wards, the Civil Court, instead of appointing a manager, may direct the Collector to take charge of the estate, and thereupon the Collector shall appoint a manager of the property and a guardian of the person of the lunatic. All the proceedings of the Collector in the charge of estates under this Act shall be subject to the control of the superior Revenue authorities.

Remuneration of managers and guardian.

XII.—If the person appointed to be manager of the estate of a lunatic, or the person appointed to be guardian of a lunatic's person, shall be unwilling to discharge the trust gratuitously, the Court or the Collector, as the case may be, may fix such allowance or allowances to be paid out of the estate of the lunatic, as under the circumstances of the case may be thought suitable.

Duties of guardian.

XIII.—The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance. When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as shall be fixed by the Court or the Collector, as the case may be, for the maintenance of the lunatic and of his family.

Powers of managers.

XIV.—Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor, if not a lunatic: and may collect and pay all just claims, debts, and liabilities due to or by the estate of the lunatic. But no such manager shall have power to sell or mortgage the estate or any part thereof, or to grant a lease of any immovable property for any period exceeding five years, without an order of the Civil Court previously obtained.

Managers to furnish inventory and annual accounts. Proceeding if accuracy of inventory or accounts be impugned.

XV.—Every person appointed by the Civil Court or by the Collector to be manager of the estate of a lunatic shall, within six months from the date of his appiontment, deliver in Court or to the Collector, as the case may be, an inventory of the landed property belonging to the lunatic, and of all such sums of money, goods, and effects, as he shall receive on account of the estate, together with a statement of all debts due by or to the same. And every such manager shall furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands. If any relative of the lunatic, or any public officer, by petition to the Court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and enquire summarily into the matter and make such order thereon as it shall think proper; or the Court, at its discretion, may refer any such petition to any subordinate Court, or to the Collector if the manager was appointed by the Collector.

Manager to

XVI.—All sums received by a manager on account of any estate in excess

of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public treasury on account of the estate, and may be invested from time to time in the public securities.

pay proceeds into the treasury.

XVII.—It shall be lawful for any relative of a lunatic to sue for an account from any manager appointed under this Act, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

Relative may sue for an account.

XVIII.—The Civil Court, for any sufficient cause, may remove any manager appointed by the Court, not being a public curator, and may appoint such curator or any other fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all monies received or disbursed by him. The Court may also, for any sufficient cause, remove any guardian appointed by the Court. In like manner the Collector, for any sufficient cause, may remove any manager or guardian appointed by the Collector; and the Court, on the application of the Collector, shall compel any manager so removed to deliver his accounts and the property in his hands.

Removal of manager or guardian by Civil Court. Removal by Collector.

XIX.—The Civil Court may impose a fine not exceeding five hundred Rupees on any manager of the estate of a lunatic, who wilfully neglects or refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the Court, and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court, and may also commit the recusant to close custody until he shall deliver such accounts or property.

Manager refusing to furnish accounts, may be fined by the Court, &c.

XX.—If it appears to the Civil Court, having regard to the situation and condition in life of the lunatic and his family, and the amount and description of his property, to be unnecessary to appoint a manager of the estate as hereinbefore provided, the Court may, instead of appointing such manager, order that the property, if money, or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the maintenance of the lunatic and his family.

Court may apply property for lunatic's maintenance without appointing any manager.

XXI.—When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person or any other person acting on his behalf or having or claiming any interest in respect of his estate, shall represent by petition to the Civil Court, or if the Court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the Court may institute an enquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs. The enquiry shall be conducted in the manner provided in Section iv. and the four following Sections of this Act; and if it be adjudged that such

Court may institute inquiry as to whether a person has ceased to be of unsound mind. And may order estate to be restored.

person has ceased to be of unsound mind and incapable of managing his affairs, the Court shall make an order for his estate to be delivered over to him, and such order shall be final.

Orders to be open to appeal.

XXII.—Except as otherwise herein provided, all orders made by a Civil Court or by any subordinate Court under this Act, shall be open to appeal under the rules in force for appeals in miscellaneous cases.

Interpretation.

XXIII.—The word "lunatic," as used in this Act, unless the contrary appears from the context, shall mean every person found by due course of law to be of unsound mind and incapable of managing his affairs. The expression "Civil Court" shall mean the principal Court of original jurisdiction in the district. Words importing the masculine gender shall include females.

ACT XL. OF 1858.

An Act for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal.

Whereas it is expedient to make better provision for the care of the persons and property of minors not brought under the superintendence of the Court of Wards; It is enacted as follows:—

Regulations repealed.

I.—Regulation I. 1800, Clause eight and the six following Clauses of Section xxix., Regulation VIII. 1805, Section v. Regulation XVII. 1805, and so much of Sections ii. and iii. Regulation V. 1799, and of Clauses two and three Section xvi. Regulation III. 1803, as restrict the interference of the Civil Courts in cases of inheritance by minors, are repealed.

Persons and property of minors not under the Court of Wards shall be subject to jurisdiction of Civil Court.

II.—Except in the case of proprietors of estates paying revenue to Government who have been or shall be taken under the protection of the Court of Wards, the care of the persons of all minors (not being European British subjects) and the charge of their property shall be subject to the jurisdiction of the Civil Court.

What persons may apply for certificate of administration. No person to institute or defend a suit without such certificate. Proviso.

III.—Every person who shall claim a right to have charge of property in trust for a minor under a will or deed, or by reason of nearness of kin, or otherwise, may apply to the Civil Court for a certificate of administration; and no person shall be entitled to institute or defend any suit connected with the estate of which he claims the charge,* until he shall have obtained such certificate. Provided that, when the property is of small value, or for any other sufficient reason, any Court having jurisdiction may allow any relative of a minor to institute or defend a suit on his behalf, although a certificate of administration has not been granted to such relative.

Who may apply to Court to appoint a person to take charge of the property, &c., of a minor.

IV.—Any relative or friend of a minor in respect of whose property such certificate has not been granted; or, if the property consist in whole or in part of land, or any interest in land, the Collector of the district may apply to the Civil Court to appoint a fit person to take charge of the property and person of such minor.

To what Court application to be made, if property be situate in more than one district.

V.—If the property be situate in more than one district, any such application as aforesaid shall be made to the Civil Court of the district in which the minor has his residence.

Summary enquiry to be made by Court.

VI.—When application shall have been made to the Civil Court, either by a person claiming a right to have charge of the property of a minor, or

* Every other act of the guardian without certificate may stand, if done under legal necessity. Decision of the High Court, dated 9th August, 1867, page 176.

by any relative or friend of a minor, or by the Collector, the Court shall issue notice of the application and fix a day for hearing the same. On the day so fixed, or as soon after as may be convenient, the Court shall enquire summarily into the circumstances, and pass orders in the case. Provided always, that it shall be competent to the Civil Court to direct any Court subordinate to it to make such enquiry and report the result.

Certificate of administration to whom to be granted. Such person may be appointed guardian of the minor's person.

VII.—If it shall appear that any person claiming a right to have charge of the property of a minor is entitled to such right by virtue of a will or deed, and is willing to undertake the trust, the Court shall grant a certificate of administration to such person. If there is no person so entitled, or if such person is unwilling to undertake the trust, and there is any near relative of the minor who is willing and fit to be entrusted with the charge of his property, the Court may grant a certificate to such relative. The Court may also, if it think fit, (unless a guardian have been appointed by the father), appoint such person as aforesaid or such relative or any other relative or friend of the minor, to be guardian of the person of the minor.

Court may call upon Collector or Magistrate for a report.

VIII.—The Court may call upon the Collector or Magistrate for a report on the character and qualification of any relative or friend of the minor, who may be desirous or willing to be entrusted with the charge of his property or person.

Proceeding if no title to a certificate be established, and if there be no relative fit to be entrusted.

IX.—If no title to a certificate be established to the satisfaction of the Court by a person claiming under a will or deed, and if there be no near relative willing and fit to be entrusted with the charge of the property of the minor, and the Court shall think it to be necessary for the interest of the minor that provision should be made by the Court for the charge of his property and person, the Court may proceed to make such provision in the manner hereinafter provided.

If estate consist only of movable property, &c., Court may grant certificate to public curator.

X.—If the estate of the minor consist of movable property, or of houses, gardens, or the like, the Court may grant a certificate to the public curator appointed under Section xix. Act XIX. of 1841 *(for the protection of movable and immovable property against wrongful possession in certain cases)*, or, if there be no public curator, to any fit person whom the Court may appoint for the purpose.

Appointment of guardian. Guardian's allowance. Minor's allowance.

XI.—Whenever the Court shall grant a certificate of administration to the estate of a minor to the public curator or other person as aforesaid, it shall at the same time appoint a guardian to take charge of the person and maintenance of the minor. The person to whom a certificate of administration has been granted, unless he be the public curator, may be appointed guardian. If the person appointed to be guardian be unwilling to discharge the trust gratuitously, the Court may assign him such allowance, to be paid out of the estate of the minor, as under the circumstances of the case it may think suitable. The Court may also fix such allowance as it may think proper

for the maintenance of the minor; and such allowance and the allowance of the guardian (if any) shall be paid to the guardian by the public curator or other person as aforesaid.

When the estate consists of land, Court may direct Collector to take charge. Appointment of manager and guardian thereupon.

XII.—If the estate of the minor consist, in whole or in part, of land or any interest in land, the Court may direct the Collector to take charge of the estate, and thereupon the Collector shall appoint a manager of the property of the minor and a guardian of his person, in the same manner and subject to the same rules in respect of such appointments and of the duties to be performed by the manager and the guardian respectively, so far as the same may be applicable, as if the property and person of the minor were subject to the jurisdiction of the Court of Wards.

Costs of enquiries under this Act.

XIII.—In all enquries held by the Civil Court under this Act, the Court may take such order as to the payment of costs by the person on whose application the enquiry was made, or out of the estate of the minor, or otherwise, as it may think proper.

When an estate, some of the co-proprietors of which are still minors, ceases to be subject to the Court of Wards, Civil Court may direct Collector to retain charge of shares and persons of minors. Provision for case of estate situated in more than one district.

XIV.—Whenever one or more of the proprietors of an estate, which has come under the jurisdiction of the Court of Wards on account of the disqualification of all the proprietors, ceases to be disqualified, and the estate, in consequence, ceases to be subject to the jurisdiction of the Court of Wards notwithstanding the continued disqualification of one or more of the co-proprietors, the Collector of the district in which the estate is situate may represent the fact to the Civil Court; and the Court, unless it see sufficient reason to the contrary, shall direct the Collector to retain charge of the persons, and of the shares of the property of the still disqualified proprietors, during the continuance of their disqualification, or until such time as it shall be otherwise ordered by the Court. The Collector shall in such case appoint a guardian for the care of the persons, and a manager for the charge of the property of the disqualified proprietors, in the manner prescribed in Section xii. If the property be situate in more than one district, the representation shall be made by the Collector who had the general management of the property under the Court of Wards, to the Civil Court of his own district, and the orders of the Court of that district shall have effect also in other districts in which portions of the property may be situate.

Proceedings of Collector subject to control.

XV.—The proceedings of the Collector in the charge of estates under this Act shall be subject to the control of the superior Revenue authorities.

Public curator, &c., to furnish inventory and annual account. Proceeding, if accuracy of inventory or account be impugned.

XVI.—The public curator and every other administrator to whom a certificate shall have been granted under Section x. shall, within six months from the date of the certificate, deliver in Court an inventory of any immovable property belonging to the minor, and of all such sums of money, goods, effects, and things as he shall have received on account of the estate, together with a statement of all debts due by or to the same. And the public curator and every such other administrator shall furnish annually,

within three months from the close of the year of the era current in the district, an account of the property in his charge, exhibiting the amounts received and disbursed on account of the estate, and the balance in hand. If any relative or friend of a minor or any public officer, by petition to the Court, shall impugn the accuracy of the said inventory and statement or of any annual account, the Court may summon the curator or administrator and enquire summarily into the matter, and make such order thereon as it shall think proper, or the Court at its discretion may refer such petition to any subordinate Court.

Surplus funds to be paid into treasury, and invested in public securities.

XVII.—All sums received by the public curator or such other administrator on account of any estate, in excess of what may be required for the current expenses of the minor or of the estate, shall be paid into the public treasury on account of the estate, and may be invested from time to time in the public securities.

Powers of the holder of a certificate.

XVIII.—Every person to whom a certificate shall have been granted under the provisions of this Act may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a minor, and may collect and pay all just claims, debts, and liabilities due to or by the estate of the minor. But no such person shall have power to sell or mortgage any immovable property, or to grant a lease thereof for any period exceeding five years, without an order of the Civil Court previously obtained.

Removal of guardian. Revocation of certificate.

XIX.—It shall be lawful for any relative or friend of a minor, at any time during the continuance of the minority, to sue for an account from any manager appointed under this Act, or from any person to whom a certificate shall have been granted under the provisions of this Act, or from any such manager or person after his removal from office or trust, from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

Continuance of suit after disqualification shall have ceased.

XX.—If the disqualification of a person, for whose benefit a suit shall have been instituted under this Act, cease before the final decision thereof, it shall be lawful for such person to continue the prosecution of the suit on his own behalf.

Relative or friend may sue for an account.

XXI.—The Civil Court for any sufficient cause may recall any certificate granted under this Act, and may direct the Collector to take charge of the estate, or may grant a certificate to the public curator or any other person as the case may be; and may compel the person whose certificate has been recalled to make over the property in his hands to his successor, and to account to such successor for all monies received and disbursed by him. The Court may also for any sufficient cause remove any guardian appointed by the Court.

Penalty for

XXII.—The Civil Court may impose a fine not exceeding five hundred

Rupees on any person who may wilfully neglect or refuse to deliver his accounts, or any property in his hands, within the prescribed time, or a time fixed by the Court; and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court; and may also commit the recusant to close custody until he shall consent to deliver such accounts or property.

neglect or refusal to deliver accounts or property.

XXIII.—The Civil Court may permit any person to whom a certificate shall have been granted under this Act, not being the public curator, and any guardian appointed by the Court, to resign his trust; and may give him a discharge therefrom on his accounting to his successor, duly appointed, for all monies received and disbursed by him, and making over the property in his hands.

Civil Court may permit resignation of trust, &c.

XXIV.—The public curator and every other administrator to whom a certificate shall have been granted under Section x., shall be entitled to receive such commission, not exceeding five per centum on the sums received and disbursed by him, or such other allowance, to be paid out of the minor's estate, as the Civil Court shall think fit.

Remuneration of public curator, &c.

XXV.—Every guardian appointed by the Civil Court, or by the Collector under this Act, who shall have charge of any male minor, shall be bound to provide for his education in a suitable manner. The general superintendence and control of the education of all such minors shall be vested in the Civil Court or in the Collector, as the case may be; and the provisions of Act XXVI. of 1854 *(for making better provision for the education of male minors subject to the superintendence of the Court of Wards)* shall, so far as is consistent with the provisions herein contained, be applicable to the Civil Court, or to the Collector, as the case may be, in respect to such minors, and to every such guardian.

Guardians of minors to provide for their education. Act XXVI. of 1854, declared applicable.

XXVI.—For the purposes of this Act, every person shall be held to be a minor, who has not attained the age of eighteen years.

Persons under the age of 18 years to be held minors

XXVII.—Nothing in this Act shall authorize the appointment of a guardian of the person of a female whose husband is not a minor, or the appointment of a guardian of the person of any minor whose father is living and is not a minor; and nothing in this Act shall authorize the appointment of any person other than a female as the guardian of the person of a female. If a guardian of the person of a minor be appointed during the minority of the father or husband of the minor, the guardianship shall cease as soon as the father or husband (as the case may be) shall attain the age of majority:

Guardians not to be appointed if husbands or fathers of minors are not minors. Guardianship to cease on majority of father or husband. Guardian of female minor to be a female.

XXVIII.—All orders passed by the Civil Court or by any subordinate Court under this Act shall be open to appeal, under the rules in force for appeals, in miscellaneous cases, from the orders of such Court and the subordinate Courts.

Appeals.

Construction.

XXIX.—The expression "Civil Court" as used in this Act shall be held to mean the principal Court of original jurisdiction in the district, and shall not include the Supreme Court; and nothing contained in this Act shall be held to affect the powers of the Supreme Court over the person or property of any minor subject to its jurisdiction. Unless the contrary appears from the context, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing the masculine gender shall include females.

ACT VIII. OF 1859.

(Received the assent of the Governor General on the 22nd March 1859.)

An Act for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter.

XXXVI.—Whenever a plaint is rejected under any of the foregoing sections, an appeal shall lie from the order rejecting the plaint. The rejection of a plaint on any of the grounds mentioned in Sections xxix. and xxxi. shall not preclude a plaintiff from presenting a fresh plaint in respect of the same cause of action.

Appeal from order rejecting plaint.

LXXVI.—If the defendant fail to show such cause, the Court shall order him to give bail for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit; and the surety or sureties shall undertake, in default of such appearance, to pay any sum of money that may be adjudged against the defendant in the suit, with costs. Any order made by the Court under the provisions of this Section shall be opened to appeal by the defendant.

If defendant fail to show cause, Court may order him to give bail. Appeal.

LXXXV.—The attachment shall be made according to the nature of the property to be attached, in the manner hereinafter prescribed for the attachment of property in execution of a decree for money. Any order for the attachment of property under the preceding Section shall be open to appeal by the defendant.

How the attachment is to be made. Appeal.

XCII.—In any suit in which it shall be shown to the satisfaction of the Court that any property which is in dispute in the suit is in danger of being wasted, damaged, or alienated by any party to the suit, it shall be lawful for the Court to issue an injunction to such party, commanding him to refrain from doing the particular act complained of, or to give such other orders for the purpose of staying and preventing him from wasting, damaging, or alienating the property, as to the Court may seem meet. And in all cases in which it may appear to the Court to be necessary for the preservation or the better management or custody of any property which is in dispute in a suit, it shall be lawful for the Court to appoint a receiver or manager of such property, and, if need be, to remove the person in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the Court may seem proper. If the property be land paying revenue to Government, and it is considered that the interests of those concerned will be promoted by the management of the Collector, the Court may appoint the Collector to be receiver and manager of such land, unless the Government shall by any general order

Cases in which an injunction to stay waste, &c., may be granted. Or in which a receiver or manager may be appointed. When the Collector may be appointed receiver.

prohibit the appointment of Collectors for such purpose, or shall in any particular case prohibit the appointment of the Collector to be such receiver.

Injunction to restrain repetition or continuance of breach of contract, &c. Proviso.

XCIII.—In any suit for restraining the defendant from the committal of any breach of contract or other injury, and whether the same be accompanied with any claim for damages or not, it shall be lawful for the plaintiff, at any time after the commencement of the suit, and whether before or after judgment, to apply to the Court for an injunction to restrain the defendant from the repetition or the continuance of the breach of contract or wrongful act complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right; and such injunction may be granted by the Court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as to such Court shall seem reasonable and just, and in case of disobedience, such injunction may be enforced by imprisonment in the same manner as a decree for specific performance. Provided always, that any order for an injunction may be charged or varied or set aside by the Court on application made thereto by any party dissatisfied with such order.

Appeal.

XCIV.—Any order made under either of the last two preceding Sections shall be open to appeal by the defendant.

No appeal from judgments passed *ex parte* or by default. When and how judgment *ex parte* may be set aside. When and how judgment by default may be set aside. No judgment to be set aside without notice. Order for setting aside judgment to be final. In appealable cause, appeal to lie from order of rejection. Proviso.

CXIX.—No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance. But in all cases in which judgment may be passed *ex parte* against a defendant, he may apply, within a reasonable time, not exceeding thirty days after any process for enforcing the judgment has been executed, to the Court by which the judgment was passed, for an order to set it aside; and if it shall be proved to the satisfaction of the Court, that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the judgment, and shall appoint a day for proceeding with the suit. In all cases of judgment against a plaintiff by default, he may apply, within thirty days from the date of the judgment, for an order to set it aside; and if it shall be proved to the satisfaction of the Court that the plaintiff was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the judgment by default and shall appoint a day for proceeding with the suit. But no judgment shall be set aside on any such application as aforesaid, unless notice thereof have been served on the opposite party. In all cases in which the Court shall pass an order under this Section for setting aside a judgment, the order shall be final; but in all appealable cases in which the Court shall reject the application, an appeal shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision, and be written upon stamp paper of the value prescribed for petitions to the Court where a stamp is required for petitions.

CCXXIX.—If it shall appear to the satisfaction of the Court that the resistance or obstruction to the execution of the decree has been occasioned by any person, other than the defendant, claiming *bonâ fide* to be in possession of the property on his own account or on account of some other person than the defendant, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant, and the Court shall, without prejudice to any proceedings to which the claimant may be liable under any law for the time being in force for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of this Act, and shall pass such order for staying execution of the decree, or executing the same, as it may deem proper in the circumstances of the case.

Obstruction by a *bonâ fide* claimant, not defendant.

CCXXX.—If any person other than the defendant shall be dispossessed of any land or other immovable property in execution of a decree, and such person shall dispute the right of the decree-holder to dispossess him of such property under the decree on the ground that the property was *bonâ fide* in his possession, on his own account or on account of some other person than the defendant, and that it was not included in the decree, or, if included in the decree, that he was not a party to the suit in which the decree was passed, he may apply to the Court within one month from the date of such dispossession; and if, after examining the applicant, it shall appear to the Court that there is probable cause for making the application, the application shall be numbered and registered as a suit between the applicant as plaintiff, and the decree-holder as defendant, and the Court shall proceed to investigate the matter in dispute in the same manner and with the like powers as if a suit for the property had been instituted by the applicant against the decree-holder.

Procedure in certain cases, if person dispossessed dispute the right of decree-holder to be put into possession.

CCXXXI.—The decision passed by the Court under either of the last two Sections shall be of the same force as a decree in an ordinary suit, and shall be subject to appeal under the rules applicable to appeals from decrees; and no fresh suit shall be entertained in any Court between the same party or parties claiming under them in respect of the same cause of action.

Appeal from decision under the last two Sections.

CCXLVI.—In the event of any claim being preferred to, or objection offered against, the sale of lands or any other immovable or movable property, which may have been attached in execution of a decree or under any order for attachment passed before judgment, as not liable to be sold in execution of a decree against the defendant, the Court shall, subject to the proviso contained in the next succeeding Section, proceed to investigate the same with the like powers as if the claimant had been originally made a defendant to the suit, and also with such powers as regards the summoning of the original defendant as are contained in Section 220. And if it shall appear to the satisfaction of the Court, that the land or other immovable or movable property was not in the possession of the party against whom execution is sought, or of some other person in trust for him, or in the occupancy of ryots or cultivators

How claims and objections to sale of attached property are to be investigated.

or other persons paying rent to him at the time when the property was attached, or that, being in the possession of the party himself at such time, it was so in his possession not on his own account or as his own property, but on account of or in trust for some other person, the Court shall pass an order for releasing the said property from attachment. But if it shall appear to the satisfaction of the Court that the land or other immovable or movable property was in possession of the party against whom execution is sought, as his own property, and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of ryots or cultivators or other persons paying rent to him, at the time when the property was attached, the Court shall disallow the claim. The order which may be passed by the Court under this Section shall not be subject to appeal, but the party against whom the order may be given shall be at liberty to bring a suit to establish his right, at any time within one year from the date of the order.

The sale, if not objected to for irregularity or if the objection is disallowed, shall become absolute.

CCLVII.—If no such application as is mentioned in the last preceding Section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale; and in like manner if such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale for irregularity. If the objection be allowed, the order made to set aside the sale shall be final; if the objection be disallowed, the order confirming the sale shall be open to appeal; and such order, unless appealed from, and if appealed from, then the order passed on the appeal, shall be final; and the party against whom the same has been given shall be precluded from bringing a suit for establishing his claim.

On what grounds, application for discharge may be made. Form of application. Verification.

CCLXXIII.—Any person arrested under a warrant in execution of a decree for money may, on being brought before the Court, apply for his discharge on the ground that he has no present means of paying the debt, either wholly or in part, or, if possessed of any property, that he is willing to place whatever property he possesses at the disposal of the Court. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family and the necessary implements of his trade) and of the places respectively where such property is to be found, or shall state that, with the exceptions abovementioned, the applicant is not possessed of any property, and the application shall be subscribed and verified by the applicant in the manner hereinbefore prescribed for subscribing and verifying plaints.

Application by prisoner for discharge on surrender of all property. Verification.

CCLXXX.—Any person in confinement under a decree may apply to the Court for his discharge. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary

wearing apparel of himself and his family and the necessary implements of his trade), and of the places respectively where such property is to be found; and such application shall be subscribed and verified by the applicant in the manner hereinbefore provided for subscribing and verifying plaints.

CCXCVII.—A suit may be brought *in formâ pauperis* in the Court having jurisdiction over the claim, subject to the following rules:— Suits may be brought *in formâ pauperis.*

CCXCVIII.—No pauper suit shall be brought for the recovery of any sum of money on account of damages for loss of caste, slander, abusive language, or assault. What suits excepted.

CCXCIX.—The application to the Court for permission to sue *in formâ pauperis* shall be by petition, which shall be written on a stamp paper of the value of eight annas. Application to be by petition on stamp paper.

CCC.—The petition shall contain the particulars required by Section xxvi. of this Act in regard to plaints, and shall have annexed to it a schedule of any movable or immovable property belonging to the petitioner, with the estimated value thereof, and shall be subscribed and verified in the manner hereinbefore prescribed for the subscription and verification of plaints. Petition what to contain.

CCCI.—The petition shall be presented to the Court by the petitioner in person; but if the petitioner satisfy the Court that he is prevented by sickness from attending the Court in person, or if the petitioner be a female, who, according to the custom and manners of the country, ought not to be compelled to appear in public, the petition may be presented by a duly authorized agent who may be able to answer all material questions relating to the application, and who shall be liable to be examined in the same manner as the party represented by him might have been examined had such party attended in person. How to be presented. Examination of petitioner, if a female, how to be taken.

CCCII.—If the petition be not framed or presented in the manner laid down in the last two preceding Sections, the Court shall reject the petition. Petition to be rejected, if not in form.

CCCIII.—If the petition be in form and duly presented, the Court shall proceed to examine the petitioner, or the agent of the petitioner, as the case may be, regarding the merits of the claim and the property of the petitioner. When the petition is presented by an agent, the Court may also, if it think proper, order that the petitioner be examined in the manner hereinbefore prescribed for the examination of absent witnesses. If in form, Court how to proceed. If presented by an agent, Court may order petitioner to be examined as an absent witness.

CCCIV.—If it appear to the Court upon such examination, that the defendant, or the matter of the suit, is not within the jurisdiction of the Court, or that the claim is barred by the statute of limitations, or that the allegations of the petitioner do not constitute a reasonabe ground of action, or (if none of the objections above stated exist) that the petitioner has failed to show that he Court may reject the application.

is not possessed of sufficient means to enable him to pay for the stamps required for the institution and prosecution of the suit, or that the petitioner has recently disposed of any property fraudulently or with a view to obtain the benefit of this chapter, the Court shall refuse to allow the petitioner to sue as a pauper.

Notice to opposite party.

CCCV.—If upon such examination the Court shall see no reason to refuse the application on any of the grounds stated in the last preceding Section, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party) for receiving such evidence as the petitioner may adduce in proof of his pauperism, and for hearing any evidence which the opposite party may bring forward in disproof of the pauperism of the petitioner.

After a summary inquiry, the Court to pass a final order.

CCCVI.—On the day appointed for the hearing, or as soon after as the business of the Court will permit, the Court shall consider any objections made by the opposite party, and shall examine any witnesses produced by either party, and make a memorandum of the substance of their evidence, and shall either allow or refuse to allow the petitioner to sue as a pauper.

Court may direct a local enquiry.

CCCVII.—Previously to passing a final order in the case, the Court may, if it deem fit, institute a local enquiry, in the manner laid down in Section clxxx. of this Act, regarding the property of the petitioner or regarding the amount or value of any property claimed.

Course of proceeding, if application be admitted.

CCCVIII.—If the application of the petitioner be granted, it shall be numbered and registered and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as an ordinary suit, except that the plaintiff shall not be liable to any further stamp duty in respect of any petition, appointment of a pleader, or other proceeding connected with the suit or with the execution of any decree passed in it.

On the decision of the suit, costs how to be calculated.

CCCIX.—On the decision of the suit, the Court shall calculate the amount of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, and such amount shall be recoverable by Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable.

Refusal to allow to sue as a pauper, to bar any subsequent application of the like nature.

CCCX.—The refusal to allow the petitioner to sue as a pauper shall be a bar to any subsequent application of the like nature in respect of the same cause of action; but the plaintiff shall be at liberty to institute a suit in the usual manner in respect of such cause of action, unless precluded by the rules for the limitation of suits.

No appeal from orders under this chapter.

CCCXI.—The orders passed by the Court under the provisions of this chapter shall not be subject to appeal.

Filing in Court an award,

CCCXXVII.—When any matter has been referred to arbitration without the intervention of any Court of Justice, and an award has been made,

any person interested in the award may, within six months from the date of the award, make application to the Court having jurisdiction in the matter to which the award relates, that the award be filed in Court. The Court shall direct notice to be given to the parties to the arbitration other than the applicant, requiring such parties to show cause, within a time to be specified, why the award should not be filed. The application shall be written on the stamp paper required for petitions to the Court where a stamp is required for petitions by any law for the time being in force, and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants. If no sufficient cause be shown against the award, the award shall be filed and may be enforced as an award made under the provisions of this Chapter.

when the matter was referred to arbitration without intervention of Court. Enforcement of such award.

CCCLXVII.—Any party to a suit, who may be unable to pay for the stamps required for the prosecution of an appeal from the decision passed therein, may be allowed to appeal as a pauper from such decision, subject to all the rules contained in the last preceding Chapter and in Chapter V. in so far as they are applicable.

Who may appeal as pauper.

CCCLXVIII.—The application to be allowed to appeal *in formâ pauperis* shall be written on a stamp paper of the value of one Rupee if the appeal lie to the District Court, and on a stamp paper of the value of two Rupees if the appeal lie to the Sudder Court, and shall be presented in the Appellate Court within the period allowed for the presentation of a memorandum of appeal.

Application to whom and when to be presented.

CCCLXIX.—The application shall contain the particulars required to be set forth in the memorandum of appeal, and shall be drawn up in the like manner. It shall have annexed to it a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, and shall also be accompanied by copies of the judgment and decree from which the appeal is made.

Form of application.

CCCLXX.—If the Appellate Court, upon a perusal of the application and of the judgment and decree of the Court below, shall see no reason to think that the decision of that Court is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust, it shall reject the application. If the application be not rejected upon any of the grounds abovementioned, enquiry shall be made into the alleged pauperism of the applicant, and such enquiry may be conducted either by the Appellate Court, or by the Court from whose decision the appeal is made under the orders of the Appellate Court. Provided that, if the applicant was allowed to sue *in formâ pauperis* in the Court below, no further enquiry in respect of his pauperism shall be necessary, unless the Appellate Court shall see special cause to direct such enquiry.

Procedure.

CCCLXXI.—The order passed by the Appellate Court on an application to be allowed to appeal *in formâ pauperis*, whether for the admission or rejection of the application, shall be final; but, if the application be rejected, the Appellate Court may, if it think proper, allow the applicant a reasonable time for preferring an appeal on a stamp of the value prescribed for appeals from decrees.

Effect of order by Appellate Court.

ACT XXVII. OF 1860.

(Received the assent of the Governor-General on the 25th June 1860.)

An Act for facilitating the collection of debts, on successions, and for the security of parties paying debts to the representatives of deceased persons.

Whereas it is expedient to consolidate and amend certain Acts now in force which provide greater security for persons paying to the representatives of deceased Hindoos, Mahomedans, and others not usually designated as British subjects, debts which are payable in respect of the estates of such deceased persons, and which facilitate the collection of such debts by removing all doubts as to the legal title to demand and receive the same; It is enacted as follows:—

Acts repealed.

I.—Act XX. of 1841 *(for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons)*: so much of Act VIII of 1842 as relates to the said Act XX. of 1841: Act X. of 1851 *(to amend Act XX. of* 1841 *for the administration of the personal estate of deceased persons)*: and Act VIII. of 1854 *(to explain and amend Act X. of* 1851 *and Act XX. of* 1841*)* are hereby repealed; except as to certificates granted and act done under the authority of the said laws before the passing of this Act.

No debt recoverable without a certificate.

II.—No debtor of any deceased person shall be compelled in any Court to pay his debt to any person claiming to be entitled to the effects of any deceased person or any part thereof, except on the production of a certificate to be obtained in manner hereinafter mentioned, or of a probate or letters of administration, unless the Court shall be of opinion that payment of the debt is withheld from fraudulent or vexatious motives, and not from any reasonable doubt as to the party entitled.

Certificate how to be obtained.

III.—The District Court within the jurisdiction of which the deceased shall have ordinarily resided at the time of his death, or if at that time he had no fixed place of residence then within the jurisdiction of which any part of the property of the deceased may be found, shall have authority to grant a certificate under this Act. The applicant in his petition shall set forth his title. The Court shall issue notice of application, inviting claimants, and fixing a day for hearing the petition, and, upon the appointed day or as soon after as may be convenient, shall determine the right to the certificate and grant the same accordingly.

Effect of certificate.

IV.—The certificate of the District Court shall be conclusive of the representative title against all debtors to the deceased, and shall afford full indemnity to all debtors paying their debts to the person in whose favour the certificate has been granted.

V.—The Court may take such security as it shall think necessary from any person to whom it shall grant a certificate for rendering an account of debts received by him, and for indemnity of persons who may be entitled to the whole or any part of the monies received by virtue of such certificate whose right to recover the same by regular suit against the holder of the certificate is not affected by this Act.

Court may take security from the grantee of a certificate.

VI.—The granting of such certificate may be suspended by an appeal to the Sudder Court, which Court may declare the party to whom the certificate should be granted, or may direct such further proceedings for the investigation of the title as it shall think fit. The Court may also, upon petition, after a certificate shall have been granted by the District Court, grant a fresh certificate in supersession of the certificate granted by the District Court. Such fresh certificate shall not affect any payments made to the person to whom any former certificate may have been granted, without notice that the same has been superseded, but shall entitle the person named therein to receive all monies that may have been recovered under the first certificate from the person to whom the same may have been granted.

Sudder Court may suspend any certificate granted by District Court or direct further proceedings.

Or grant fresh certificate in supersession of the certificate granted by the District Court.

VII.—Every certificate shall give authority to the person to whom the same is granted throughout the Presidency within which the same is granted, and no certificate subsequently granted in respect of the same property shall be valid or effectual, except as hereinafter mentioned.

Local extent of power given by certificate.

VIII.—If the estate of the deceased shall include any Government Securities or Bank shares, or any shares in any public Company, the certificate may empower the person certified as aforesaid to receive interest or dividends thereon, or on any of them, or to negotiate the same or any of them: in such case the certificate shall describe the securities and shares in respect of which such powers are given, and such powers shall not be vested by the certificate except by express words.

Government Securities, Bank shares, and shares in public Companies.

IX.—In the case of disputes among persons claiming to be jointly entitled to be proprietors of any Government Securities as the representatives of any deceased person, the District Court, whenever sufficient cause shall be shown, and on the request of any such claimant, may, so far as concerns the said securities, grant a certificate under this Act to such person as shall be from time to time appointed by the local Government to act as trustee under this Section, and shall specify in such certificate the several persons appearing to him to be such proprietors and their several shares; and the said trustee by virtue of such certificate shall be entitled to receive and give discharges for the interest accruing due on such securities, and shall account for and pay the sum to the several persons specified in the certificate, to be thereunto entitled, according to the shares therein set forth, and shall be empowered to act in all other respects concerning the said securities as agent for such persons, and shall be entitled to receive such commission, not exceeding one per centum, on the sums received and paid by him, as the local Government shall think fit. Provided neverthe-

Appointment of trustee in case of disputed succession.

Proviso.

less, that the right of any other person to recover the whole or any part of the monies so paid by regular suit against all or any of the persons to whom the same have been paid, shall not be affected by this Act.

Appropriation of securities, if not settled within two years.

X.—If any such disputes among persons claiming to be proprietors of Government Securities are not ended within two years from the date of the certificate granted under the last preceding Section, the said trustee may apportion the principal sum of the said securities rateably among the parties appearing from the certificate to be proprietors thereof, and may apply for and receive new securities from the proper officer appointed to issue the same in the respective names of the several parties certified to be entitled thereto; provided that such new securities shall be issued only according to the rules in use for the regulation and issue of such Government Securities, and the receipt of the said trustee for such new securities, by endorsement on the old securities or otherwise, shall be a legal discharge to the Government against the disputing parties claiming to be entitled to the several amounts for which such securities shall be issued. Provided always that, if the amount of any Government Securities in dispute or any part thereof shall not be sufficient to admit of their rateable division according to the rules applicable to the issue of such securities, the said trustee may sell and dispose of the disputed securities, or such part shall be necessary under this provision, and apportion the proceeds thereof among the parties entitled to receive the same.

Proviso.

Effect of certificate granted by trustee.

XI.—Every certificate granted to the trustee appointed under Section ix. shall be taken to supersede and annul any previous certificate so far as such previous certificate relates to the said Government Securities.

Payments under certificate void by reason of previous certificate.

XII.—When a certificate shall have been granted, in cases in which such certificate would be valid but for the previous grant of a certificate, all payments made to the person holding the latter certificate in ignorance of the grant of the previous certificate, shall be held good against claims under such previous certificate.

Certificate in respect of property of deceased Hindoos, Mahomedans, &c., void after grant of probate or letters.

XIII.—With regard to the property of a deceased Hindoo, Mahomedan, or other person not usually designated by the term "British subject," no certificate in respect of any such property shall be valid if made after a probate or letters of administration granted in respect of the same, provided assets belonging to the deceased were at the time of his death within the local jurisdiction of the Court granting the probate or letters of administration.

Certain payments under certificate granted after grant of probate or letters, protected.

XIV.—Where a certificate shall have been granted, in cases in which such certificate would be valid but for a probate or letters of administration previously granted, all payments made to the person holding the certificate in ignorance of the previous granting of the probate or letters of administration, shall be held good against claims under the probate or letters of administration so previously granted.

XV.—No probate or letters of administration shall be valid for the purpose of the recovery of debts or for the security of debtors, after a certificate granted in respect of the same property for which such probate or letters of administration shall have been granted, provided assets belonging to the deceased were at the time of his death within the jurisdiction of the Court granting such certificate.

Probate or letters void after grant of certificate.

Proviso.

XVI.—Where probate or letters of administration may have been granted in cases in which such probate or letters of administration would be valid but for the previous grant of a certificate, all payments made in ignorance of the previous grant of the certificate shall be held good against claims under such previous certificate.

Certain payments under probate or letters, granted after grant of certificate protected.

XVII.—Curators appointed under Act XIX. of 1841 who may be invested with certain powers which are conferred on persons obtaining certificates under this Act, shall not exercise any powers which, but for that Act, would lawfully belong to persons obtaining certificates, or to executors or administrators where a certificate, probate, or letters of administration has been actually obtained; but all persons who may have paid debts or rents to a curator authorized by a Court to receive the same shall be indemnified, and the curator shall be responsible for the payment of the same to the person who has obtained a certificate, the executor or administrator as the case may be.

Curators not to exercise certain powers.

XVIII.—All probates and letters of administration granted by any Supreme Court of Judicature in cases in which any assets belonging to deceased persons were at the time of their deaths within the local jurisdiction of the Court granting the probate or letters of administration, shall have the effect of probate and letters of administration granted in respect of the property of British subjects, but for the purpose of the recovery of debts only and the security of debtors paying the same, except so far as is in this Act provided.

Effect of probates and letters granted to representatives of "British subjects."

XIX.—A certificate of administration granted by the British representative accredited to any Foreign Prince or State shall, as regards the residents within the territories of such Prince or State, have the same effect in respect to Government Securities as a certificate granted to a Native subject of Her Majesty under the provisions hereinbefore contained.

Effect of certificates granted by British representatives in Foreign States.

XX.—Every certificate of administration granted under the last preceding Section shall, as regards the Government Securities, give authority to the person to whom the same shall be granted throughout the British territories in India, and have the same effect throughout the said territories as a certificate granted under Section vii. of this Act has within the Presidency within which the same is granted.

Local extent of power given by such certificates.

XXI.—Any Court or officer authorized to grant a certificate may from time to time extend the same to any Government Security or Bank share not originally specified therein, and every such extension shall have the same effect

Extension of certificate.

as if the Government Security or Bank share to which the certificate shall be extended had been originally specified therein.

Security upon extension.

XXII.—Upon the extension of a certificate, security may be required in the same manner as upon the original grant of a certificate.

Act not to apply to British subjects.

XXIII.—Nothing in this Act contained shall be held to extend to the property of any person usually designated as a British subject.

Interpretation.

XXIV.—The following words and expressions in this Act shall have the meaning hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say)—

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Words importing the masculine gender shall include females.

The words "District Court" shall mean the principal Civil Court of original jurisdiction of a Zillah or District.

The words "Sudder Court" shall be deemed to include the highest Civil Court of Appeal in any part of the British territories in India not subject to the control and superintendence of a Sudder Court.

ACT IX. OF 1861.

(Received the assent of the Governor-General on the 24th April 1861.)

An Act to amend the law relating to Minors.

WHEREAS it is expedient to amend the Law for hearing suits relative to the custody and guardianship of minors; It is enacted as follows :—

Application.

I.—Any relative or friend of a minor who may desire to prefer any claim in respect of the custody or guardianship of such minor may make an application by petition, either in person or by a duly constituted agent, to the principal Civil Court of original jurisdiction in the district by which such application, if preferred in the form of a regular suit, would be cognizable, and shall set forth the grounds of his application in the petition. The Court, if satisfied by an examination of the petitioner or his agent, if he appear by agent, that there is ground for proceeding, shall give notice of the application to the person named in the petition as having the custody or being in the possession of the person of such minor, as well as to any other person to whom the Court may think it proper that such notice should be given, and shall fix as early a day as may be convenient for the hearing of the petition and the determination of the right to the custody or guardianship of such minor.

Production, and temporary custody and protection, of minor.

II.—The Court may direct that the person having the custody or being in possession of the person of such minor shall produce him or her in Court or in any other place appointed by the Court on the day fixed for the hearing of the petition or at any other time, and may make such order for the temporary custody and protection of such minor as may appear proper.

Court, after hearing statements of the parties, &c., to make order regarding custody or guardianship of minor.

III.—On the day appointed for the hearing of the petition or as soon after as may be practicable, the Court shall hear the statements of the parties or their agents if they appear by agents, and such evidence as they or their agents may adduce, and thereupon shall proceed to make such order as it shall think fit in respect to the custody or guardianship of such minor and the costs of the case.

Procedure.

IV.—In cases instituted under this Act, the Court shall be guided by the procedure prescribed in Act VIII. of 1859 *(for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter)* in so far as the same shall be applicable and material; and any order made by the Court may be enforced as if such order had been made in a regular suit.

Appeal.

V.—An appeal shall lie to the Sudder Court from any order made by a lower Court under this Act, under the rules applicable to regular appeals to such Sudder Court, except that the petition of appeal may be written on a stamp paper of the value prescribed for petitions to the Sudder Courts.

Orders passed under this Act not liable to be contested in a regular suit.

VI.—Any order passed under this Act in respect to the custody or guardianship of a minor, shall not be liable to be contested in a regular suit.

Saving of laws.

VII.—Nothing in this Act shall be taken to interfere with the jurisdiction exercised under the laws in force by any Supreme Court of Judicature or the Courts of Wards; or under Act XXI. of 1855 *(for making better provision for the education of male minors and the marriage of male and female minors, subject to the superintendence of the Court of Wards in the Presidency of Fort Saint George)*, Act XL. of 1858 *(for making better provision for the care of the persons and property of minors, in the Presidency of Fort William in Bengal)*.

Interpretation.

VIII.—The term "Sudder Court" in this Act shall denote the highest Court of Appeal in any part of the British territories in India.

ACT XXIII. OF 1861.

(Received the assent of the Governor-General on the 28th August 1861.)

An Act to amend Act VIII. of 1859 (for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter).

How questions regarding amount of mesne profits and interest and sums paid in satisfaction of decrees, &c., are to be determined.

XI.—All questions regarding the amount of any mesne profits which by the terms of the decree may have been reserved for adjustment in the execution of the decree, or of any mesne profits or interest which may be payable in respect of the subject-matter of a suit between the date of the institution of the suit and execution of the decree, as well as questions relating to sums alleged to have been paid in discharge or satisfaction of the decree or the like, and any other questions arising between the parties to the suit in which the decree was passed and relating to the execution of the decree, shall be determined by order of the Court executing the decree, and not by separate suit, and the order passed by the Court shall be open to appeal. Provided that if upon a perusal of the petition of appeal and of the order against which the appeal is made, the Court shall see no reason to alter the order, it may reject the appeal, and it shall not be necessary in such case to issue a notice to the respondent before the order of rejection is passed.

ACT XVIII. OF 1869.

(Received the assent of the Governor-General on the 13th August 1869.)

An Act for imposing Stamp Duties on certain Instruments.

CHAPTER I.

PRELIMINARY.

Short title.

I.—This Act may be called 'The General Stamp Act, 1869.'

Extent of Act.

It extends to the whole of British India.

Commencement of Act.

And it shall come into force on the first day of January 1870.

Repeal of enactments.

II.—On and after that day, the enactments specified in the third schedule hereto annexed shall be repealed to the extent specified in the third column of the same schedule.

Interpretation-clause.

III.—In this Act and the first and second schedules hereto annexed, unless there be something repugnant in the subject or context—

(1.) 'Affidavit' includes every declaration in writing, on oath or affirmation, made before a person authorized by law to administer an oath :

(2.) 'Award' includes every decision in writing by an arbitrator or umpire :

(3.) 'Bill of exchange' includes a húndi and every other instrument (except a cheque) whereby a person is ordered to pay to another a specified sum of money :

(4.) 'Bill of lading' includes every instrument signed by the owner of a ship or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver them at a port and to a person therein mentioned or indicated :

(5.) 'Bond' includes every instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be :

(6.) 'Bottomry-bond' includes every instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to prosecute her voyage :

(7.) 'Charter-party' includes every instrument, (except an agreement for

the hire of a tug steamer) whereby a ship or some principal part thereof is let for the specified purposes of the charterer :

(8.) 'Cheque' includes every instrument whereby a bank, banker, or person acting as a banker, is ordered to pay on demand a specified sum of money :

(9.) 'Collector' means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras or Bombay, and, without those limits, the Collector of a District, and includes Deputy Commissioner or any officer having jurisdiction equivalent to that of a Collector of a District :

(10.) 'Composition-deed' includes every instrument executed by a debtor, whereby the debtor conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors :

(11.) 'Conveyance' means any instrument (except a transfer of a share in a Company or Association, a mortgage-deed, a settlement, a lease, an instrument of reconveyance of mortgaged property, a composition-deed, an instrument of gift, or an instrument of exchange or partition-deed, where no money is paid for equality of exchange or partition) by which property is conveyed *inter vivos* :

(12.) 'Counterpart' means the duplicate of a conveyance, settlement, mortgage-deed or lease, such duplicate not being executed by the grantor, settlor, mortgagor or lessor, but by some other party to the instrument : it includes a kabúliyát in cases where a lease has been granted :

(13.) 'Dock-warrant' includes every instrument evidencing the title or any person therein named or his assign, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the company or person in whose custody such goods may be :

(14.) 'Impressed' includes 'printed' and 'lithographed' :

(15.) 'Lease' includes every instrument (not being a counterpart) by which one person lets or agrees to let, or takes, or agrees to take, immovable property to or from another :

(16.) 'Letter of credit' includes every instrument by which one person requests another to give credit to the person in whose favour it is drawn :

(17.) 'Letter of license' includes every agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion :

(18.) 'Mortgage-deed' includes every instrument evidencing a pledge of property for securing the payment of money :

(19.) 'Negotiable instrument' includes bills of exchange, promissory notes and cheques :

(20.) 'Notarial act' means any instrument, endorsement, note or entry made or signed by a Notary Public in the execution of the duties of his office, and includes every like instrument, endorsement, note or entry made or signed by a consul, attorney, or other person authorized by law to act as a Notary Public :

(21.) 'Paper' includes vellum, parchment or any other material on which an instrument may be written :

(22.) 'Partition-deed' means any instrument whereby persons interested in immovable property jointly, or in common, or as co-parceners, or as members of an undivided Hindú family, divide or agree to divide such property in severalty, and includes a batwárá :

(23.) 'Policy of insurance' means any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event : it does not include a policy on life :

(24.) 'Power of attorney' includes every instrument (except a proxy) empowering a person to act in the stead of the person executing it :

(25.) 'Promissory note' includes every instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight :

(26.) 'Property' means property being in British India :

(27.) 'Protest' means a declaration in writing made by a Notary Public, or other person authorized to act as such, attesting the dishonour of a bill of exchange or promissory note :

(28.) 'Protest of the Master of a ship' includes every declaration of the particulars of her voyage, drawn up by him with a view to the adjustment of losses, or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship :

(29.) 'Proxy' means an instrument whereby a person authorizes another to vote for him at a meeting :

(30.) 'Release' includes every instrument whereby a person renounces a claim upon another person or against any specified property :

(31.) 'Respondentia-bond' includes every instrument securing a loan on the cargo laden or to be laden on board a ship, and making repayment contingent on the arrival of the cargo at the port of destination : and

(32.) 'Settlement' means any instrument (other than a Will) whereby the destination or devolution of movable or immovable property is settled or agreed to be settled.

CHAPTER II.

STAMP-DUTIES CHARGEABLE UNDER THIS ACT.

Scheduled duties chargeable.

IV.—For every instrument mentioned in the first and second schedules hereto, and executed in British India on or after the first day of January 1870,

or executed out of British India on or after that day, but relating to any property within British India,

there shall be payable to the Government of India, as stamp-duty, the amount indicated in the first or second schedule hereto annexed, to be the proper duty for such instrument.

Duties how levied.

By adhesive stamps.

V. *(a.)*—All instruments chargeable under this Act with the duty of one anna, bills of exchange and promissory notes drawn or made out of British India, and transfers by endorsement of shares of Companies and Associations may (subject to the provisions hereinafter contained) be stamped with adhesive stamps.

By impressed stamps.

(b.)—The stamp on every other instrument chargeable under this Act shall either be impressed on the paper whereon the instrument is written or be otherwise denoted by the Collector or the Superintendent of Stamps in accordance with such rules as the Governor-General of India in Council may from time to time prescribe in this behalf.

Duties by whom payable.

VI.—In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—

1st.—In the case of any instrument mentioned in the first schedule to this Act (other than a policy of insurance, a mortgage-deed, a settlement, a conveyance, a lease, an instrument of exchange or partition-deed where money is paid for equality of exchange or partition, an appraisement or valuation, an award and a copy, duplicate or extract), by the person drawing, making, or executing such instrument :

2nd.—In the case of a policy of insurance, by the insured :

3rd.—In the case of a settlement, by the settlor :

4th.—In the case of a conveyance, mortgage-deed or lease, by the grantee, mortgagor or lessee :

5th.—In the case of a counterpart of a lease, by the lessor :

6th.—In the case of a partition-deed, by the parties thereto in proportion to their respective shares in the property comprised therein : and

7th.—In the case of an exchange where money is paid for equality of exchange, by the person paying such money.

Duties on bills of exchange.

VII.—The duty imposed by this Act on bills of exchange shall be chargeable *(a)* on all bills drawn and payable in British India, *(b)* on all bills drawn in, but payable out of, British India, and *(c)* on all bills drawn out of, but accepted, or paid, or endorsed, transferred, or otherwise negotiated within, British India.

Bills drawn out of British India.

VIII.—The holder of any bill of exchange or promissory note drawn or made out of British India, and not stamped as required by this Act, shall, before he presents the same for acceptance or for payment, or endorses, transfers, or otherwise negotiates such bill or note, affix thereto the proper adhesive stamp or stamps for denoting the duty with which it is chargeable under this Act.

Instruments reserving interest.

IX.—Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with a duty higher than that with which it would have been chargeable had no mention of interest been made therein.

Consideration expressed in foreign currency.

X.—When the consideration set forth in or the amount secured by any instrument chargeable under this Act is expressed in pounds sterling, pounds currency, francs or dollars, such consideration or amount shall, for the purposes of this Act, be estimated according to the following scale :—

One pound sterling or pound currency is equivalent to ten rupees.

One hundred francs are equivalent to forty rupees.

One Mexican or China dollar is equivalent to two rupees four annas.

One Mauritius dollar is equivalent to two rupees.

Optional stamps where

XI.—When the amount or value of the subject-matter of any bond, mortgage-deed or settlement chargeable under this Act with an *ad valorem*

stamp-duty and referred to or mentioned in Section vi. cannot be ascertained, the proper stamp to be borne by such instrument may be determined by the person bound under that Section to bear the expense of providing the stamp:

Value of subject-matter is indeterminate.

Provided that, under such instrument, nothing shall be recoverable more than the highest amount or value for which, if stated in an instrument of the same denomination, the stamp actually used under such option would have been sufficient.

XII.—The whole amount secured for the payment of an annuity, or other sum payable periodically for an indefinite time, by a bond, promissory note, or mortgage-deed shall, for the purposes of this Act, be deemed to be ten times the amount of the payment calculated for one year.

Bond, &c., for payment of annuity.

Where the consideration for a conveyance is an annuity or other sum payable periodically for an indefinite time, such consideration shall, for the purposes of this Act, be deemed to be ten times the amount of the payment calculated for one year.

Consideration an annuity.

XIII.—Where more instruments than one are required for the completion of any transaction involving the execution of a mortgage-deed, settlement, conveyance or lease, the proper stamp required by this Act for such mortgage-deed, settlement, conveyance or lease, shall be borne by the principal instrument executed in such transaction, and each of the other instruments shall bear a stamp one of rupee.

Several instruments used in a single transaction.

The parties may determine for themselves which of such instruments shall for the purposes of this section be deemed to be the principal instrument: Provided that, where the instruments are liable to different rates of duty under this Act, the instrument liable to the highest of such rates shall be deemed to be the principal instrument.

XIV.—An instrument so framed as to come within two or more of the definitions in Section iii. shall, when the instruments to which those definitions apply are liable to different rates of duty under this Act, be charged with the highest of such rates:

Instrument coming within two or more of the definitions in Section iii.

Provided that when any one instrument purports, for distinct considerations, to convey by way of sale, to lease, to give, or to mortgage two or more subject-matters,

or to convey by way of sale, to lease, or to give one subject-matter and to mortgage another,

such instrument shall be chargeable with the aggregate amount of the duties to which instruments effecting separately each of such conveyances, leases, gifts, or mortgages would be liable under this Act.

Instruments exempt from duty.

XV.—Nothing in this Act shall render the following instruments chargeable with duty :—

(1.)—Receipt or discharge granted to a cultivator for the rent of land paying revenue to Government, or (in the Presidencies of Madras and Bombay) of inám lands.

(2.)—Receipt given for money or securities for money deposited in any bank or in the hands of any banker or person acting as a banker to be accounted for :

Provided the same be not expressed to be received of or by the hands of any other than the person to whom the same is to be accounted for :

Provided further, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share or in respect of a call upon any scrip or share of or in any Company or Association or proposed or intended Company or Association.

(3.)—Receipt or discharge endorsed on or contained in any instrument duly stamped according to the law in force in British India at the date of its execution, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal money, interest or annuity or other periodical payment, thereby secured.

(4.)—Transfer by endorsement of a negotiable instrument or a policy of marine insurance or of insurance against fire.

(5.)—Letters of hypothecation accompanying a bill of exchange.

(6.)—Transfers of securities of the Government of India.

(7.)—Bond to Government for the due performance of the duties of any salaried office.

(8.)—Agreement or memorandum of an agreement for or relating to the sale of goods or merchandize.

(9.)—Lease granted to a cultivator, unless a fine or premium be paid in consideration of such lease.

(10.)—Counterpart of such lease.

(11.)—Surrender of land executed by a cultivator to his landlord.

(12.)—Affidavit made for the sole purpose of enabling any person to receive any pension or charitable allowance.

(13.)—Copy of any paper which a public officer is by law required to make or furnish in his official capacity.

(14.)—Copies made for the private use only of any person having the custody of the original instrument or of his counsel, attorney or vakil.

(15.)—Receipt or other instrument executed by or on behalf of Government, in cases where the Government would, but for this exemption, be liable to pay for the stamp thereon.

(16.)—Letter of cover or engagement to issue a policy of insurance:

Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy of insurance, nothing shall be recoverable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned.

Power to lower rates of stamp-duty.

XVI.—The Governor-General of India in Council may, from time to time, by order published in the *Gazette of India*, reduce or remit in the whole or any part of British India, the duties chargeable under this Act on all or any of the instruments mentioned in the first and second schedules hereto annexed, or on any particular class of such instruments, or on any of the instruments belonging to such class, or on any of the instruments mentioned in the said schedules when executed or granted by or to any particular class of persons, or by or to any members of such class,

and may in like manner cancel or vary such order to the extent of the powers hereby given.

Every such cancelment or variation shall be published in the *Gazette of India*.

Saving of judicial stamp-duties.

XVII.—Nothing in this chapter or in the schedules hereto annexed, shall be deemed to effect the stamp-duties chargeable under Act No. XXVI. of 1867, Section vi., or under any other enactment relating to stamps used in judicial proceedings.

CHAPTER III.

UNSTAMPED OR INSUFFICIENTLY STAMPED DOCUMENTS.

Instruments not duly stamp-

XVIII. *(a)*.—No instrument chargeable with stamp-duty shall be received in any Court of justice, or by any person having by law or consent of parties au-

ed inadmissible in evidence.

thority to receive evidence, as creating, modifying, transferring or extinguishing, or purporting to create, modify, transfer or extinguish, any right or obligation,

or as evidence in any civil proceeding,

or shall be acted upon in any such Court, or by any such person as aforesaid, or by any public officer,

or shall be registered by any officer acting under any law for the registration of assurances or in any public office,

or shall be authenticated by any public officer,

unless such instrument bears a stamp of a value not less than the amount of the duty with which it is chargeable under the law in force in British India at the time of its execution.

Except in criminal proceedings.

(b.)—Every instrument chargeable with stamp-duty shall be admitted in evidence in any criminal proceeding (other than proceedings under Chapter XXII. of the Code of Criminal Procedure), although it may not have the stamp required by law impressed thereon or affixed thereto.

Foreign bill unstamped or with stamp uncancelled.

XIX.—Subject to the provisions contained in Section xxvi., no person taking a bill of exchange or promissory note requiring a stamp under Section viii., either in payment or as a security, or by purchase or otherwise, shall be entitled to recover thereon, or to make the same available for any purpose, unless at the time when he so takes it, the proper stamp is affixed thereto and cancelled in manner directed by this Act.

Powers of Civil Courts as to unstamped or insufficiently stamped instrument.

XX.—When any instrument chargeable with stamp-duty executed on paper not bearing the stamp required by the law in force in British India at the time of its execution is produced in a Civil Court, the Court, if satisfied that the omission to execute such instrument on paper bearing the proper stamp, did not arise out of any intention to evade payment of the proper duty, and on payment of such duty, or, in the case of an insufficiently stamped instrument, of the sum required to make up the full amount chargeable on such instrument,

together with a penalty of the following amount (that is to say) :—

Penalty.

if the instrument is produced within one year from the date of its execution, five times, or if it is produced after one year from such date, twenty times, such proper stamp-duty or deficient portion thereof as aforesaid,

shall certify by endorsement on such instrument that the proper stamp-duty has been levied thereon :

Provided that no such penalty shall exceed one thousand rupees.

Such certificate shall be conclusive evidence as to the amount of stamp-duty leviable on such instrument, and the said instrument shall thereupon be admissible as if originally executed on paper bearing the proper stamp.

Registration of payments and penalties levied by Civil Courts.

XXI. *(a.)*—An entry of every such payment showing the amount thereof shall be made in a book to be kept by the Court, and shall also be endorsed on the instrument in respect of which the payment is made, and such endorsement shall be signed by the presiding officer.

Returns to Collector.

(b.)—The Court shall at the end of every month make a return to the Collector of the money (if any) which it has so received, distinguishing between the sums received by way of penalty and the sums received by way of duty, stating the number and title of the suit, the name of the party from whom the money was received, and the date (if any) and description of the instrument.

Payments to Collector.

(c.)—The Court shall pay over all money so received to the Colletor or to such person as he may from time to time appoint to receive the same.

Impounding unstamped instruments in Civil or Criminal Courts.

XXII.—If it appear to a Civil or Criminal Court that any instrument filed or exhibited in such Court was executed on unstamped or insufficiently stamped paper with the intention of evading payment of the stamp-duty required by the law in force in British India at the time of execution, the Court may impound the instrument and send it to the Collector, and he shall thereupon prosecute the offender.

Impounding unstamped instruments in public office.

XXIII.—When any instrument is produced before any registering officer, or in any public office other than a Civil or Criminal Court, if it appear to the registering officer or to the head of such public office that the instrument is chargeable with stamp-duty under the law in force in British India at the time of its execution, but that it does not bear a stamp of a value equal to or exceeding the value of the stamp prescribed therefor by that law, he shall impound the instrument, and send it forthwith to the Collector.

Powers of Collector as to unstamped or insufficiently stamped instruments. Prosecution.

XXIV. *(a.)*—When any instrument is produced before the Collector, otherwise than for the purpose of obtaining an adjudication under Section xxxix. or has been sent to him under Section xxiii., he shall either proceed in accordance with the provisions of Section xx., exercising the powers thereby conferred on a Civil Court; or if it appear to him that the instrument was executed on unstamped or insufficiently stamped paper with the intention of evading payment of the proper stamp-duty, he shall prosecute all the persons that have executed the said instrument or such of them as to him may seem fit;

or if it appear to him that the instrument is properly stamped, or that it is not chargeable with stamp-duty under the law in force in British India at the time of its execution, he shall certify by endorsement thereon that it is properly

stamped, or that it is not so chargeable (as the case may be); and he shall thereupon return such instrument to the registering or other public officer by whom it was sent, or to the person by whom it was produced. and, subject to the provision contained in Section xl., it shall be deemed to be properly stamped or not chargeable (as the case may be):

Remission of penalty.

(b.)—Provided that, in any case coming under this Section, if the instrument is brought within one year from the date of its execution to the Collector, or other public officer by whom it has been sent to the Collector under Section xxiii., and if the Collector is satisfied that such instrument has not been duly stamped previously to being signed or executed by reason of accident, mistake, inadvertence or urgent necessity, he may remit the whole or any part of the penalty prescribed by Section xx. :

(c.)—Provided also that. in any case coming under this Section in which an instrument, other than a bill of exchange or promissory note, purports to have been executed out of British India, if the Collector is satisfied that the instrument was so executed, and also that it has been brought to him within the three months next after its arrival in British India, he shall, on payment of the duty with which such instrument would have been chargeable if executed in British India, certify by endorsement thereon that the proper stamp-duty his been levied upon it.

(d.)—Subject to the provision contained in Section xl., such certificate shall be conclusive evidence of the amount of stamp-duty leviable on the instrument, which shall thereupon be admissible as if originally executed on paper bearing the proper stamp.

Validity of instrument for which Collector levies penalty.

XXV.—When the Collector elects to proceed under Section xx., he shall (if he imposes a penalty). after endorsing on the instrument the certificate thereby directed, or (if he remits the whole of the penalty) after endorsing on the instrument a certificate to that effect, return such instrument to the registering or other public officer by whom it was sent or to the person by whom it was produced.

Subject to the provision contained in Section xl., the said instrument shall thereupon be, and be deemed to have been, as valid as if it was originally executed on paper bearing the proper stamp.

Loss of instruments sent under Sections xxii., xxiii., xxiv or xxv.

In case any instrument sent or returned under Sections xxii., xxiii., or xxiv., or the former part of this Section, be lost, destroyed or injured during transmission, the Court or officer sending or returning the same shall not be liable for such loss, destruction or injury.

Power to stamp instruments chargeable with one anna.

XXVI. *(a.)*—When any bill of exchange, promissory note, cheque or order for the payment of money on demand by any banker or person acting as a banker, chargeable hereunder with the duty of one anna, comes to his

hands unstamped, he may affix thereto the necessary adhesive stamp, and cancel the same in the manner required by this Act, and upon so doing, may charge the duty against the person who ought to have paid the same, or deduct such duty from the sum so directed to be paid.

(b.)—Such bill, note, cheque, or order shall, so far as relates to the stamp-duty chargeable thereon, be valid; but this shall not relieve any person or firm from liability to the penalty which he or it may have incurred by issuing or giving the said bill, note, cheque, or order unstamped.

Procedure where receipts are required.

XXVII. *(a.)*—Any person, or the agent of any person, from whom money exceeding in amount twenty rupees is due or claimed to be due, and who shall have paid such money, may provide a piece of paper with an adhesive stamp of one anna affixed thereto, and may require of the person entitled to such money, or any agent to whom the same shall have been paid, a receipt for such money and also the value of the said stamp.

Refusal to give receipts.

(b.)—If any one to whom money shall have been so paid refuses to give such receipt upon demand thereof, or to pay the value of the said stamp thereon, he shall be liable for every such offence to a fine not exceeding one hundred rupees.

After-stamping when inadmissible.

XXVIII.—Except as provided in Sections viii. and xxvi., no stamp shall be affixed to, or impressed on, any bill of exchange, or promissory note, or any instrument chargeable hereunder with the duty of one anna, subsequent to the execution thereof, nor shall the provisions of Sections xx. and xxiv. apply to any such instrument.

CHAPTER IV.

CRIMINAL PENALTIES.

Penalty for executing instrument on paper not duly stamped.

XXIX.—Any person or firm making, signing or issuing or, except as provided in Section xxvi., accepting, endorsing, paying or receiving payment of any bill of exchange, promissory note, cheque or other similar instrument liable to any of the duties hereby imposed, without the same being duly stamped,

and any person making, executing or signing otherwise than as a witness any other instrument liable to any of such duties without the same being duly stamped,

shall, for every such offence, be liable to fine not exceeding one hundred rupees,

or, if ten times the value of the proper stamp exceeds one hundred rupees, to fine not exceeding ten times such value,

or, where an insufficient stamp has been used, if ten times the deficient amount exceeds one hundred rupees, to fine not exceeding ten times such amount.

Penalty for presenting, &c., unstamped foreign bills or notes.

XXX.—Any person or firm presenting for acceptance or for payment, or accepting, paying, endorsing, transferring or in any manner negotiating any bill of exchange or promissory note drawn or made out of British India whereon there is not such stamp as is required by this Act, shall be liable for every such offence to fine not exceeding one hundred rupees.

Cancelling stamps on foreign bills by holder.

XXXI.—Any person or firm presenting for acceptance or payment a bill of exchange or promissory note to which an adhesive stamp has been affixed under Section viii.,

and any person or firm endorsing, transferring, or in any manner negotiating such bill or note,

shall, before delivering the same out of his or its hands, custody or power, cancel the stamp so affixed,

in such manner as to show that the stamp has been made use of, and so that the same shall not admit of being used again.

Penalty for failure to cancel such stamps.

Any person or firm who or which ought, as directed by this Act, to cancel such stamp in manner aforesaid, and refusing or neglecting so to do, shall be liable for every such offence to fine not exceeding one hundred rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

XXXII.—Any person or firm drawing or executing within British India a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped as required by this Act the whole number of bills or policies of which such bill or policy purports the set to consist, shall, for every such offence, be liable to fine not exceeding one thousand rupees.

Cancellation of adhesive stamp by maker or executant.

XXXIII.—Whenever an adhesive stamp is used as hereinbefore authorized, the person making or executing the instrument to which such stamp is affixed shall, before delivering the instrument out of his hands, custody or power, cancel the stamp so used so that it cannot be used again.

Penalty for failure to cancel such stamps.

Any person making or executing such instrument and failing to cancel the stamp affixed thereto in manner aforesaid, shall, for every such offence, be liable to fine not exceeding one hundred rupees.

Consideration to be stated.

XXXIV. *(a.)*—When any movable or immovable property is sold, the full consideration money directly or indirectly paid or secured, or agreed to be paid

or secured, for the same, shall be truly set forth in words at length in the principal or only instrument whereby the property sold is conveyed to, or vested in, the purchaser or in any other person by his direction.

(b.)—When any property is sold and conveyed subject to any mortgage or bond or other debt, or to any gross or entire sum of money, such debt or sum shall be deemed the consideration-money or part of the consideration-money (as the case may be) in respect whereof the duty chargeable under the first schedule to this Act shall be paid,

Mortgage-money to be deemed purchase-money.

notwithstanding the purchaser is not or does not become personally liable for such debt or sum,

or does not agree to pay the same or to indemnify the seller against the same.

(c.)—If the full consideration-money is not set forth as aforesaid, the purchaser and the seller shall each be liable to fine not exceeding five hundred rupees, and shall also pay a fine of five times the amount of the excess of duty with which such instrument would have been chargeable under this Act, if the full consideration-money had been duly set forth in such instrument, in addition to the duty actually paid for the same.

Penalty for not stating consideration.

XXXV.—Any attorney, vakíl, pleader, mukhtár or other person employed in or about the preparing of any instrument in or upon which the full consideration-money is hereby required to be truly set forth,

Penalty on attorneys, &c., not inserting true consideration.

or employed for any of the parties thereto in anywise about or relating to the transaction therein mentioned,

who knowingly inserts or sets forth, or causes to be inserted or set forth, in or upon any such instrument any other than the full consideration-money,

shall, for every such offence, pay a fine not less than five hundred rupees and not exceeding five thousand rupees.

Every attorney, vakíl, pleader and mukhtár convicted under this Section shall, from the date of such conviction, be disabled to practise as an attorney, vakil, pleader or mukhtár:

Provided that no person shall be liable to any penalty or disability under this Section, unless the duty actually paid for the instrument is less than would have been payable for the same in case the consideration-money had been truly set forth as aforesaid.

XXXVI.—Whoever abets within the meaning of the Indian Penal Code any offence made punishable by this Act shall be punished with the punishment hereinbefore provided for such offence.

Abetment.

Recovery of fines.

XXXVII.—All fines imposed under this Act may be recovered, if for offences committed outside the local limits of the towns of Calcutta, Madras and Bombay, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns in force for the time being.

In the case of a firm, the Magistrate imposing the fine may issue a warrant for the levy of the amount by distress and sale of any movable property belonging to the firm, or to all or any of the members thereof.

Reward to informers.

XXXVIII.—Whenever an offender is sentenced to pay a fine under this Act, the convicting Magistrate may award any portion not exceeding one-half to the person on whose information the offender has been convicted.

CHAPTER V.

JURISDICTION.

Adjudication of doubt as to proper stamp.

XXXIX.—When any instrument chargeable with stamp-duty under this Act, whether previously stamped or not, is brought to the Collector, and the person bringing it desires to have the opinion of that officer as to the duty with which it is so chargeable, and pays a fee of five rupees, the Collector shall assess and charge the duty to which, in his judgment, the instrument is liable; and upon payment of such duty or of such a sum as, with the duty already paid thereon, is equal to the duty so assessed and charged, and of the penalty, if any, incurred through the instrument having been executed on insufficiently stamped paper, shall certify by endorsement on such instrument that the full duty with which it is chargeable under this Act has been paid.

The instrument shall thereupon be deemed to be duly stamped and shall be receivable in evidence or otherwise in all Courts and public offices as if originally executed on paper bearing the proper stamp:

Provided that nothing contained in the former part of this Section shall authorize the Collector to make any such endorsement on bills of exchange, promissory notes or instruments chargeable with the stamp-duty of one anna when brought to him on unstamped or insufficiently stamped paper subsequent to the drawing or execution thereof.

Revision of Collector's certificates and orders.

XL.—All certificates and orders of the Collector under this Act shall be open to revision on appeal or otherwise by the chief controlling Revenue authority to which the Collector is subordinate:

Provided that no order passed on such revision shall invalidate any registration or other proceeding previously made or taken of or upon an instrument endorsed by the Collector under Section xxiv. or Section xxv.

Reference to High Court.

XLI. *(a.)*—The chief controlling Revenue authority may state any case coming before it under this Act and refer such case with its own opinion thereon, if the case arise in the Presidency of Fort Saint George or the Presidency of Bombay, to the local High Court, and if it arise in any other part of British India, to the High Court at Fort William.

(b.)—Every such case shall be decided by at least three Judges of the High Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

(c.)—If the High Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue authority by which it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.

(d.)—The High Court upon the hearing of any such case shall decide the questions raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded; and it shall send to the Revenue authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Revenue authority shall, on receiving the same, dispose of the case conformably to such judgment.

Power to remit penalties.

XLII.—The chief controlling Revenue authority may, upon petition, remit wholly or in part any penalty imposed under this Act.

Institution and conduct of prosecutions.

XLIII.—All prosecutions in respect of any offence punishable by this Act, shall be instituted and conducted by the Collector or such other officer as the local Government generally or the Collector specially authorizes in that behalf.

Jurisdiction of Magistrate.

XLIV.—Offences punishable under this Act may be tried within the limits of the towns of Calcutta, Madras and Bombay by a Magistrate of Police, and beyond those limits by the Magistrate of the District or a person exercising the powers of a Magistrate (as defined in the Code of Criminal Procedure) or of a Subordinate Magistrate of the first class:

Provided that, in imposing penalties under this Act, no such person shall exceed the limits of jurisdiction prescribed for him by the said Code.

CHAPTER VI.

MISCELLANEOUS.

Refund in case of useless or spoiled stamped paper.

XLV.—If any person possessing any stamped paper which has been obtained in the manner allowed by this Act or Act No. X. of 1862 *(to consolidate and amend the law relating to stamp duties)*, or any paper on which the stamp has been denoted by the Collector or the Superintendent of Stamps, does not require the same for use,

or if the paper so possessed becomes spoiled or unfit for use as hereinafter mentioned,

the Collector of the District in which the paper has been purchased may, upon application made to him within one year after such purchase, and upon delivery to him of such paper, refund the amount paid to Government for the same, whether by the applicant or any other person;

or in case the owner of the paper so spoiled or unfit for use, desires to be supplied with stamped paper of similar or equal value, the Collector may cause such paper to be delivered to him or his agent upon payment of the value of the paper on which the new stamp or stamps shall be impressed.

When stamped paper shall be held to be spoiled.

XLVI.—Stamped paper and paper on which the stamp has been denoted by the Collector or the Superintendent of Stamps, shall be held to be spoiled or unfit for use within the meaning of Section xlv. when—

by accident happening to the same before any writing thereupon has been finally signed and executed, it is rendered unfit for use;

or when, because of some error in the drawing up or copying of any writing thereon, discovered before such writing has been finally signed and executed, it is rendered of no avail;

or when, by reason of death or refusal of the party whose signature may be necessary to effect the transaction intended by such writing, it remains incomplete and of no avail;

or when, by refusal of any office or trust granted by a writing thereon, it has failed of the purpose intended;

or when, by reason of failure of consideration, the transaction intended to be effected or evidenced by a writing thereon cannot be effected or evidenced;

or when the transaction intended to be effected by a writing thereon has been effected by some other instrument duly stamped;

or when, in the case of a negotiable instrument, such instrument is, by reason of non-delivery to the payee or person acting in his behalf, or other cause, never brought into use;

or when, in the case of a bill of exchange other than a bill drawn in a set, it has not been presented for acceptance or payment.

Suit where consideration is not stated.

XLVII.—Where in case of a sale, or an exchange, upon which money is paid for equality of exchange, or a lease for a premium, the full consideration-money is not truly set forth in the manner hereby directed, the purchaser, or the person paying money for equality of exchange, or the lessee (as the case may be), or his representative in interest, may sue for and recover back from the seller, or the person receiving such money, or the lessor (as the case may be), or his representative in interest, so much of the consideration-money as is not set forth as aforesaid, or the whole thereof, if no part of the same is so set forth;

and in such suit, notwithstanding anything hereinbefore contained, the conveyance, instrument of exchange, or lease shall be admissible in evidence.

Power to make rules for sale of stamps.

XLVIII.—Every local Government shall frame rules for regulating the sale of stamps and stamped paper required by this Act or by Act No. XXVI. of 1867 *(to amend the law relating to stamp duties)* for determining the persons by whom such sale is to be conducted, and for fixing the remuneration of such persons within the territories subject to its control; and may from time to time alter and add to such rules.

Approval and publication of rules.

Such rules, alterations and additions shall, when approved by the Governor-General of India in Council, and after publication in the local official *Gazette*, have the force of law.

Penalty for disobeying rules.

Any person appointed to sell such stamps and stamped paper, who knowingly disobeys any such rule, shall be punished with simple imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both.

Employment of single impressed stamp.

XLIX.—When an impressed stamp is used under Section v. to denote the amount of duty with which any instrument is chargeable, such amount shall be denoted by a single stamp, except when such amount exceeds one thousand rupees, in which case it may be denoted by two or more impressed stamps of which the aggregate amount is the amount so required:

Provided that, when a single impressed stamp of any amount less that one thousand rupees is not procurable on application to the Collector or stamp-vendor appointed under Section xlviii., it shall be lawful, on such officer making a certificate to that effect, for the person requiring such stamp to denote the amount by two or more impressed stamps, of which the aggregate amount is the amount so required.

Employment of several stamped papers.

L.—When more stamped papers than one are used under Section xlix. for an instrument chargeable with stamp-duty under this Act, each paper so used shall contain a part of the instrument.

Act to be translated, indexed and sold cheaply.

LI.—Every local Government shall cause this Act and the schedules hereto annexed to be carefully translated into the principal vernacular languages of the territories subject to its control.

A full alphabetical index shall be added to every such translation, and the translation and index shall be printed and sold to the public at a price not exceeding four annas per copy.

SCHEDULE I.

Instruments chargeable with ad valorem Stamp duties.

DESCRIPTION OF INSTRUMENTS.		PROPER STAMP-DUTY.		
		If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
		Rs. A. P.	Rs. A. P.	Rs. A. P.
1. BILL OF EXCHANGE PAYABLE OTHERWISE THAN ON DEMAND ...	When the amount of the bill or note does not exceed Rs. 100 ...	0 1 0	0 1 0	0 1 0
	And when the amount exceeds Rs. 100 but does not exceed Rs. 200 ...	0 2 0	0 1 0	0 1 0
	" " 200 " " 300 ...	0 3 0	0 2 0	0 1 0
	" " 300 " " 600 ...	0 6 0	0 3 0	0 2 0
	" " 600 " " 900 ...	0 9 0	0 5 0	0 3 0
	" " 900 " " 1,200 ...	0 12 0	0 6 0	0 4 0
2. PROMISSORY NOTE PAYABLE OTHERWISE THAN ON DEMAND ...	" " 1,200 " " 1,500 ...	0 15 0	0 8 0	0 5 0
	" " 1,500 " " 2,500 ...	1 8 0	0 12 0	0 8 0
	For every Rs. 2,500 or part thereof in excess of Rs. 2,500 up to Rs. 10,000	1 8 0	0 12 0	0 8 0
	For every Rs. 5,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000	3 0 0	1 8 0	1 0 0
	And for every Rs. 10,000 or part thereof in excess of Rs. 30,000 ...	6 0 0	3 0 0	2 0 0

SCHEDULE I—*(continued).*

Instruments chargeable with ad valorem Stamp-duties.

Description of Instruments.		Proper Stamp-duty.	
		If drawn singly.	If drawn in duplicate, then for each part.
		Rs. A. P.	Rs. A. P.
3. POLICY OF INSURANCE ...	When the amount insured does not exceed Rs. 1,000	0 4 0	0 2 0
	And for every further sum of Rs. 1,000 insured or for every part thereof	0 4 0	0 2 0
		Rs. A. P.	
4. *TRANSFER OF A SHARE IN A COMPANY OR ASSOCIATION ...	When the amount paid for such share does not exceed Rs. 100 ..	0 4 0	
	For every Rs. 100 of such amount or part thereof in excess of Rs. 100 up to Rs. 1,000	0 4 0	
	And for every Rs. 500 of the same or part thereof in excess of Rs. 1,000	1 4 0	
5. BOND FOR ANY SPECIFIED AMOUNT, OTHER THAN AN ADMINISTRATION BOND ...	When the amount secured does not exceed Rs. 25	0 2 0	
	When such amount exceeds Rs. 25 but does not exceed Rs. 50 ...	0 4 0	
	" " " 50 " " " 100 ...	0 8 0	
6. BOTTOMRY-BOND ...	For every Rs. 100 or part thereof in excess of Rs. 100 up to Rs. 1,000	0 8 0	
	" " 500 " " " " 1,000 " " 10,000	2 8 0	
7. RESPONDENTIA-BOND ...	" " 1,000 " " " " 10,000 " " 30,000	2 8 0	
	Adn for every Rs. 10,000 or part thereof in excess of " 30,000	12 8 0	

8. CUSTOMS-BOND ...	(a) When the amount secured does not exceed Rs. 1,000 ..	The stamp-duty with which a Bond for such amount is chargeable (No. 5).
	(b) When such amount exceeds Rs. 1,000	Five Rupees.
9. INDEMNITY-BOND	(a) When the amount secured does not exceed Rs. 3,000 ...	The stamp-duty with which a Bond for such amount is chargeable (No. 5).
	(b) When such amount exceeds Rs. 3,000 or is not expressed ...	Sixteen Rupees.
10. MORTGAGE-DEED, WHEN POSSESSION OF THE PROPERTY COMPRISED THEREIN IS NOT GIVEN BY THE MORTGAGOR AT THE TIME OF EXECUTION ...	... ...	The stamp-duty with which a Bond for the amount secured is chargeable (No. 5).
11. INSTRUMENT OF FURTHER CHARGE ON SUCH PROPERTY, WHETHER BY INDORSEMENT OR OTHERWISE ...		
12. BOND OR MORTGAGE-DEED FOR THE DUE EXECUTION OF AN OFFICE, OR TO ACCOUNT FOR MONEY RECEIVED BY VIRUE THEREOF ...	(a) When the amount secured does not exceed Rs. 3,000 ...	The stamp-duty with which a Bond for such amount is chargeable (No. 5).
	(b) When such amount exceeds Rs. 3,000 or the amount is not expressed	Sixteen Rupees.
13. ASSIGNMENT OF ANY INTEREST SECURED BY A BOND OR MORTGAGE-DEED ...	(a) When the amount of such interest does not exceed Rs. 3,000	The stamp-duty with which a Bond for such amount is chargeable (No. 5).
	(b) In any other case	Sixteen Rupees.

NOTE.—The stamp-duty chargeable on the instrument marked * may be denoted by an adhesive stamp when the transfer is made by endorsement.

SCHEDULE I—*(continued).*

Instruments chargeable with ad valorem Stamp-duties.

Description of Instruments.		Proper Stamp-duty.
14. SETTLEMENT		The stamp-duty with which a Bond for the amount or value of the property thereby settled is chargeable (No. 5).
		Rs. A. P.
15. CONVEYANCE ...	When the amount paid or secured does not exceed Rs. 50 ...	0 8 0
16. MORTGAGE-DEED, when Possession of the Property comprised therein is given by the Mortgagor at the time of execution ...	When such amount exceeds Rs. 50 but does not exceed Rs. 100 ...	1 0 0
	For every Rs. 100 or part thereof in excess of Rs. 100 up to Rs. 1,000	1 0 0
	„ „ 500 „ „ „ 1,000 „ 10,000	5 0 0
17. INSTRUMENT OF FURTHERCHARGE on such Property, whether by Indorsement or otherwise...	„ „ 1,000 „ „ „ 10,000 „ 30,000	5 0 0
	„ „ 10,000 „ „ „ 30,000 „ 1,00,000	50 0 0
	„ „ 20,000 „ „ „ 1,00,000	75 0 0
18. INSTRUMENT OF EXCHANGE OR PARTITION OF IMMOVABLE PROPERTY when Money is paid for equality of Exchange or Partition	... ...	The stamp-duty with which a conveyance for the amount so paid is chargeable (No. 15), in addition to the stamp-duty with which an instrument of exchange of immovable property or a partition-deed is chargeable under Schedule II.

19. LEASE ...	(a) Where the lease is expressed to be for a term of less than one year	The stamp duty with which a Bond (No 5) for the total amount payable under such lease is chargeable.
	(b) Where the lease is expressed to be for a term of not less than one year but not more than three years	The stamp-duty with which a Bond for the total amount payable under such lease during the first year of the term is chargeable.
	(c) Where the lease is expressed to be for a term exceeding three years, or where no term is expressed	The stamp-duty with which a conveyance for the total amount payable under such lease during the first year of the term is chargeable.
	(d) Where the lease is granted in consideration of a fine or premium and where no rent is reserved	The stamp-duty with which a conveyance for the amount so paid is chargeable.
	(e) Where the lease is granted in consideration of a fine or premium and also of a rent	The stamp-duty with which a conveyance for the amount of the fine or premium is chargeable, in addition to the stamp-duty with which the lease would be chargeable in case no such fine or premium had been paid.
20. SURRENDER OF LEASE ...	(a) Where the amount of stamp-duty chargeable on the lease does not exceed Rs. 16	The stamp-duty with which the lease is chargeable (No. 19).
	(b) In any other case	Sixteen Rupees.

SCHEDULE I.—*(continued).*

Instruments chargeable with ad valorem Stamp-duties.

Description of Instruments.		Proper Stamp-duty.
21. APPRAISEMENT OR VALUATION— Of any property or of any interest therein Or of the annual or monthly value thereof ... ... Or of any repairs wanted ... ... Or of the materials used or to be used in any building ... Or of any Artificer's work	*(a)* Where the amount of such appraisement or valuation does not exceed Rs. 500	Eight Annas.
	(b) Where it exceeds Rs. 500	One Rupee.
22. AWARD ...	*(a)* Where the amount or value of the property in dispute expressed in such award does not exceed Rs. 500 ...	Eight Annas.
	(b) Where such amount or value exceeds Rs. 500, or where no amount or value is expressed in the award ...	One Rupee.

23. COPY, DUPLICATE OR EXTRACT, ATTESTED TO BE A TRUE COPY, DUPLICATE OR EXTRACT ...	*(a)* If the duty chargeable on the original does not exceed Rs. 5, or if no duty is chargeable on the original ...	Eight Annas.
	(b) If the duty chargeable on the original exceeds Rs. 5, but does not exceed Rs. 20	One Rupee.
	(c) If such duty exceeds Rs. 20, but does not exceed Rs. 50 ...	Two Rupees.
	(d) If such duty exceeds Rs. 50	Four Rupees.

SCHEDULE I.—*(continued).*

Table showing the Stamp-duty chargeable under this Schedule on any Bill of Exchange or Promissory Note, the amount of which does not exceed Rs. 2,00,000.

When the amount exceeds		but does not exceed	Proper Stamp-duty. If drawn singly.		If drawn in sets of two, for each part of the set.		If drawn in sets of three, for each part of the set.	
			Rs.	A.	Rs.	A.	Rs.	A.
Rs.	...	Rs. 100	0	1	0	1	0	1
100	...	200	0	2	0	1	0	1
200	...	300	0	3	0	2	0	1
300	...	600	0	6	0	3	0	2
600	...	900	0	9	0	5	0	3
900	...	1,200	0	12	0	6	0	4
1,200	...	1,500	0	15	0	8	0	5
1,500	...	2,500	1	8	0	12	0	8
2,500	...	5,000	3	0	1	8	1	0
5,000	...	7,500	4	8	2	4	1	8
7,500	...	10,000	6	0	3	0	2	0
10,000	...	15,000	9	0	4	8	3	0
15,000	...	20,000	12	0	6	0	4	0
20,000	...	25,000	15	0	7	8	5	0
25,000	...	30,000	18	0	9	0	6	0
30,000	...	40,000	24	0	12	0	8	0
40,000	...	50,000	30	0	15	0	10	0
50,000	...	60,000	36	0	18	0	12	0
60,000	...	70,000	42	0	21	0	14	0
70,000	...	80,000	48	0	24	0	16	0

SCHEDULE I.—*(continued).*

Table showing the Stamp-duty chargeable under this Schedule on any Bill of Exchange or Promissory Note, the amount of which does not exceed Rs. 2,00,000—(concluded).

When the amount exceeds		but does not exceed	Proper Stamp-duty. If drawn singly.		If drawn in sets of two, for each part of the set.		If drawn in sets of three, for each part of the set.	
			Rs.	A.	Rs.	A.	Rs.	A.
Rs. 80,000	...	Rs. 90,000	54	0	27	0	18	0
90,000	...	1,00,000	60	0	30	0	20	0
1,00,000	...	1,10,000	66	0	33	0	22	0
1,10,000	...	1,20,000	72	0	36	0	24	0
1,20,000	...	1,30,000	78	0	39	0	26	0
1,30,000	...	1,40,000	84	0	42	0	28	0
1,40,000	...	1,50,000	90	0	45	0	30	0
1,50,000	...	,610,000	96	0	48	0	32	0
1,60,000	...	1,70,000	102	0	51	0	34	0
1,70,000	...	1,80,000	108	0	54	0	36	0
1,80,000	...	1,90,000	114	0	57	0	38	0
1,90,000	...	2,00,000	120	0	60	0	40	0

SCHEDULE I.—*(continued).*

Table showing the Stamp-duty chargeable under this Schedule on Bonds for any sum not exceeding Rs. 4,00,000.

When such sum exceeds			but does not exceed		Proper Stamp-duty.	
					Rs.	A.
Rs.	...	...	...	Rs. 25	0	2
	25	...	...	50	0	4
	50	...	...	100	0	8
	100	...	...	200	1	0
	200	...	...	300	1	8
	300	...	...	400	2	0
	400	...	...	500	2	8
	500	...	...	600	3	0
	600	...	...	700	3	8
	700	...	...	800	4	0
	800	...	...	900	4	8
	900	...	...	1,000	5	0
	1,000	...	...	1,500	7	8
	1,500	...	...	2,000	10	0
	2,000	...	...	2,500	12	8
	2,500	...	...	3,000	15	0
	3,000	...	...	3,500	17	8
	3,500	...	...	4,000	20	0
	4,000	...	...	4,500	22	8
	4,500	...	...	5,000	25	0
	5,000	...	...	5,500	27	8
	5,500	...	...	6,000	30	0
	6,000	...	...	6,500	32	8

SCHEDULE I.—*(continued).*

Table showing the Stamp-duty chargeable under this Schedule on Bonds for any sum not exceeding Rs 4,00,000—(continued).

When such sum exceeds			but does not exceed		Proper Stamp-duty.	
					Rs.	A.
Rs.	6,500	... ...	Rs.	7,000	35	0
	7,000	... ...		7,500	37	8
	7,500	... ...		8,000	40	0
	8,000	... ...		8,500	42	8
	8,500	... ...		9,000	45	0
	9,000	... ...		9,500	47	8
	9,500	... ...		10,000	50	0
	10,000	... ...		11,000	52	8
	11,000	... ...		12,000	55	0
	12,000	... ...		13,000	57	8
	13,000	... ...		14,000	60	0
	14,000	... ...		15,000	62	8
	15,000	... ...		16,000	65	0
	16,000	... ...		17,000	67	8
	17,000	... ...		18,000	70	0
	18,000	... ...		19,000	72	8
	19,000	... ...		20,000	75	0
	20,000	... ...		21,000	77	8
	21,000	... ...		22,000	80	0
	22,000	... ...		23,000	82	8
	23,000	... ...		24,000	85	0
	24,000	... ...		25,000	87	8
	25,000	... ...		26,000	90	0

SCHEDULE I.—*(continued).*

Table showing the Stamp-duty chargeable under this Schedule on Bonds for any sum not exceeding Rs. 4,00,000—(continued).

When such sum exceeds			but does not exceed		Proper Stamp-duty.	
					Rs.	A.
Rs. 26,000	...	...	Rs. 27,000		92	8
27,000	...	...	28,000		95	0
28,000	...	...	29,000		97	8
29,000	...	...	30,000		100	0
30,000	...	...	40,000		112	8
40,000	...	...	50,000		125	0
50,000	...	...	60,000		137	8
60,000	...	...	70,000		150	0
70,000	...	...	80,000		162	8
80,000	...	...	90,000		175	0
90,000	...	...	1,00,000		187	8
1,00,000	...	...	1,10,000		200	0
1,10,000	...	...	1,20,000		212	8
1,20,000	...	...	1,30,000		225	0
1,30,000	...	...	1,40,000		237	8
1,40,000	...	...	1,50,000		250	0
1,50,000	...	...	1,60,000		262	8
1,60,000	...	...	1,70,000		275	0
1,70,000	...	...	1,80,000		287	8
1,80,000	...	...	1,90,000		300	0
1,90,000	...	...	2,00,000		312	8
2,00,000	...	...	2,10,000		325	0
2,10,000	...	...	2,20,000		337	8

SCHEDULE I.—*(continued).*

Table showing the Stamp-duty chargeable under this Schedule on Bonds for any sum not exceeding Rs. 4,00,000—(concluded).

When such sum exceeds			but does not exceed	Proper Stamp-duty. Rs.	A.
Rs. 2,20,000	...	...	Rs. 2,30,000	350	0
2,30,000	...	...	2,40,000	362	8
2,40,000	...	...	2,50,000	375	0
2,50,000	...	...	2,60,000	387	8
2,60,000	...	...	2,70,000	400	0
2,70,000	...	...	2,80,000	412	8
2,80,000	...	...	2,90,000	425	0
2,90,000	...	...	3,00,000	437	8
3,00,000	...	...	3,10,000	450	0
3,10,000	...	...	3,20,000	462	8
3,20,000	...	...	3,30,000	475	0
3,30,000	...	...	3,40,000	487	8
3,40,000	...	...	3,50,000	500	0
3,50,000	...	...	3,60,000	512	8
3,60,000	...	...	3,70,000	525	0
3,70,000	...	...	3,80,000	537	8
3,80,000	...	...	3,90,000	550	0
3,90,000	...	...	4,00,000	562	8

SCHEDULE I.—*(continued).*

Table showing the Stamp-duty chargeable under this Schedule on any Conveyance the consideration-money set forth in which does not exceed Rs. 4,00,000.

When the amount of such consideration-money exceeds			but does not exceed	Proper Stamp-duty.	
				Rs.	A.
Rs. ...	...	...	Rs. 50	0	8
50	...	...	100	1	0
100	...	...	200	2	0
200	...	...	300	3	0
300	...	...	400	4	0
400	...	...	500	5	0
500	...	...	600	6	0
600	...	...	700	7	0
700	...	...	800	8	0
800	...	...	900	9	0
900	...	...	1,000	10	0
1,000	...	...	1,500	15	0
1,500	...	...	2,000	20	0
2,000	...	...	2,500	25	0
2,500	...	...	3,000	30	0
3,000	...	...	3,500	35	0
3,500	...	...	4,000	40	0
4,000	...	...	4,500	45	0
4,500	...	...	5,000	50	0
5,000	...	...	5,500	55	0
5,500	...	...	6,000	60	0
6,000	...	...	6,500	65	0
6,500	...	...	7,000	70	0
7,000	...	...	7,500	75	0

SCHEDULE I.—*(continued).*

Table showing the Stamp-duty chargeable under this Schedule on any Conveyance the consideration-money set forth in which does not exceed Rs. 4,00,000—(continued).

When the amount of such consideration-money exceeds			but does not exceed	Proper Stamp-duty.	
				Rs.	A.
Rs. 7,500	...	...	Rs. 8,000	80	0
8,000	...	...	8,500	85	0
8,500	...	...	9,000	90	0
9,000	...	...	9,500	95	0
9,500	...	...	10,000	100	0
10,000	...	...	11,000	105	0
11,000	...	...	12,000	110	0
12,000	...	...	13,000	115	0
13,000	...	...	14,000	120	0
14,000	...	...	15,000	125	0
15,000	...	...	16,000	130	0
16,000	...	...	17,000	135	0
17,000	...	...	18,000	140	0
18,000	...	...	19,000	145	0
19,000	...	...	20,000	150	0
20,000	...	...	21,000	155	0
21,000	...	...	22,000	160	0
22,000	...	...	23,000	165	0
23,000	...	...	24,000	170	0
24,000	...	...	25,000	175	0
25,000	...	...	26,000	180	0
26,000	...	...	27,000	185	0
27,000	...	...	28,000	190	0
28,000	...	...	29,000	195	0

SCHEDULE I.—*(concluded).*

Table showing the Stamp-duty chargeable under this Schedule on any Conveyance the consideration-money set forth in which does not exceed Rs. 4,00,000—(concluded).

When the amount of such consideration-money exceeds			but does not exceed		Proper Stamp-duty.	
					Rs.	A.
Rs. 29,000	...	...	Rs. 30,000		200	0
30,000	...	...	40,000		250	0
40,000	...	...	50,000		300	0
50,000	...	...	60,000		350	0
60,000	...	..	70,000		400	0
70,000	...	...	80,000		450	0
80,000	...	...	90,000		500	0
90,000	...	...	1,00,000		550	0
1,00,000	...	...	1,20,000		625	0
1,20,000	...	...	1,40,000		700	0
1,40,000	...	...	1,60,000		775	0
1,60,000	...	...	1,80,000		850	0
1,80,000	...	...	2,00,000		925	0
2,00,000	...	..	2,20,000		1,000	0
2,20,000	...	...	2,40,000		1,075	0
2,40,000	...	..	2,60,000		1,150	0
2,60,000	...	...	2,80,000		1,225	0
2,80,000	...	...	3,00,000		1,300	0
3,00,000	...	...	3,20,000		1,375	0
3,20,000	...	...	3,40,000		1,450	0
3,40,000	...	...	3,60,000		1,525	0
3,60,000	...	...	3,80,000		1,600	0
3,80,000	...	...	4,00,000		1,675	0

SCHEDULE II.

Instruments chargeable with fixed Stamp-duties.

Description of Instruments.	Proper Stamp-duty.
1.—BILL OF EXCHANGE, PROMISSORY NOTE, CHEQUE OR ORDER for the payment on demand of an amount exceeding twenty rupees	One Anna.
2.—LETTER OF CREDIT	
3.—AGREEMENT OR MEMORANDUM OF AN AGREEMENT relating to the sale of any Government Security, share in a Company or Association, or Bill of Exchange	
4.—CERTIFICATE OR OTHER DOCUMENT purporting to denote the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any Company or Association, or proposed Company or Association, or to become proprietor of shares, scrip or stock in or of any such Company or Association	
5.—NOTE OR MEMORANDUM written in any book or written on a separate paper, whereby any account, debt or demand, or any part of any account, debt or demand therein specified, and amounting to twenty rupees or upwards, is expressed to have been balanced, or is acknowledged to be due	
6.—SHIPPING ORDER for or relating to the conveyance of goods on board of any vessel	
7.—RECEIPT OR DISCHARGE given for or upon the payment of money, or delivery of goods, in satisfaction of a debt, the amount or value of which money or goods exceeds twenty rupees	
8.—PROXY to vote at any one meeting of—	
(a).—Members of a Company or Association whose stock or funds is or are divided into shares and transferable	
(b).—Municipal Commissioners	
(c).—Justices of the Peace, being a body corporate	
(d).—Proprietors, members or contributors to the funds of any institution	
9.—BILL OF LADING	Four Annas.
10.—DOCK-WARRANT	

* This duty may be denoted by an adhesive stamp.

SCHEDULE II,—*(continued).*

DESCRIPTION OF INSTRUMENTS.	PROPER STAMP-DUT
11.—ANY AGREEMENT OR MEMORANDUM OF AN AGREEMENT not otherwise provided for by this Act : Provided that where two or more letters are offered in evidence to prove any agreement between the parties who shall have written such letters, it shall be sufficient if any one of such letters shall be stamped as an agreement. 12.—NOTICE OF PROTEST by the master of a ship ... ... 13.—POWER-OF-ATTORNEY to present for registration— *(a)*.—A single instrument ... ... *(b)*.—Any number of instruments required for the completion of a single transaction	Eight Annas.
14.—AFFIDAVIT not made for the immediate purpose of being produced in any Court ... ... 15.—COLLATERAL INSTRUMENT not otherwise provided for by this Schedule .. .. 16.—COUNTERPART OF ANY INSTRUMENT chargeable with stamp-duty under this Act : Provided that the counterpart shall not be available unless the Collector or such other officer as he may authorize in that behalf shall certify that the proper stamp-duty on the original instrument has been paid. Such certificate shall be endorsed on the counterpart on the same being produced together with the original instrument, and on the whole being duly executed and duly stamped in other respects .. .. 17.—INSTRUMENT OF DISSOLUTION OF PARTNERSHIP .. 18.—POWER-OF-ATTORNEY for the performance of a single act when the value of the matter to be dealt with does not exceed five hundred rupees	One Rupee.
19.—POWER OF-ATTORNEY for the performance of a single act when the value of the matter to be dealt with exceeds five hundred rupees .. .. 20.—BOND OR MORTGAGE-DEED executed as a collateral security for the performance of any act, where such performance is secured by some instrument previously executed on stamped paper in accordance with the law in force in British India at the time of its execution ... . 21.—INSTRUMENT EVIDENCING AN AGREEMENT to secure the repayment on or before the expiration of three months from the date of such instrument of a loan made upon the deposit of title-deeds or other valuable security .. .. 22.—CHARTER-PARTY	Two Rupees.

SCHEDULE II,—*(concluded).*

DESCRIPTION OF INSTRUMENTS.	PROPER STAMP-DUTY.
23.—NOTARIAL ACT	Two Rupees.
24.—PROTEST OF A BILL OF EXCHANGE OR PROMISSORY NOTE	
25.—PROTEST OF THE MASTER OR OWNER OF A SHIP ...	
26.—INSTRUMENT OF CO-PARTNERSHIP	Four Rupees.
27.—RECONVEYANCE OF MORTGAGED PROPERTY, when the original mortgage-deed has been stamped in accordance with the law in force in British India at the time of its execution ...	
28.—COMPOSITION-DEED	Eight Rupees.
29.—LETTER OF LICENSE	
30.—RELEASE	
31.—INSTRUMENT PURPORTING TO CONFER AN AUTHORITY TO ADOPT	
32.—POWER-OF-ATTORNEY not otherwise provided for by this Schedule	
33.—ARTICLES OF ASSOCIATION of a Company	Sixteen Rupees.
34.—MEMORANDUM OF ASSOCIATION of a Company	
35.—APPOINTMENT in execution of a power, whether of Trustees, or of property, movable, or immovable, where made by any writing not being a Will	
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37.—INSTRUMENT OF GIFT OF IMMOVABLE PROPERTY ...	
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40.—PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN INVENTION, or for the extention of the term of the exclusive privilege of making, using or selling such invention in India	One hundred Rupees.
41.—ARTICLES OF CLERKSHIP or contract whereby any person shall first become bound to serve as a clerk in order to his admission as an Attorney in any High Court	Five hundred Rupees.

SCHEDULE III.

Enactments repealed by Section 2.

No. and date of Act.	Title of Act.	Extent of repeal.
Act XIV. of 1840.	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 9 Geo. IV., cap. XIV.	Section 8.
„ XVIII. of 1856.	An Act relating to the administration of the public revenues in the Town of Calcutta.	So much of the preamble as relates to stamp-duty, and section 2.
„ XIX. of 1858.	An Act to provide for the authentication of stamped paper issued from the Stamp Office in Calcutta.	The whole.
„ XLI. of 1858.	An Act to amend Regulation X. 1829 of the Bengal Code (for the collection of Stamp-duties).	The whole.
„ XV. of 1859.	An Act for granting exclusive privileges to inventors.	Section 37.
„ X. of 1862.	An Act to consolidate and amend the law relating to Stamp duties.	Sections 1 to 25 both inclusive, sections 27, 28, 29, sections 34 to 57 both inclusive, and schedule A.
„ XXVI. of 1867.	An Act to amend the law relating to Stamp-duties.	Section 5.

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" " where possession is transferred, *ib.*, No. 16.
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" as a collateral security, stamp on, schedule II., No. 20.
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Mortgage-money to be deemed purchase-money, sec. 34, clause *(b).*
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" " never brought into use, sec. 46.
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" stamp on, schedule II., No. 23.
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" for receipt, sec. 27.
" refund for spoiled or useless stamped, sec. 45.
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" persons to pay duty on, sec. 6.
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" for presenting or negotiating unstamped bills, sec. 30.
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" " duty on conveyance where consideration is a, *ib.*
" " exemption of receipt for, sec. 15, clause (3).
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" " person to pay duty on, sec. 6.
" " exemption of transfer by endorsement of marine or fire, sec. 15, clause (4).
" " exemption of engagement to issue, *ib.*, clause (16).
" " penalty for not drawing full number of set of marine, sec. 32.
" " stamp on, schedule I., No. 3.
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'Power of attorney' defined, sec. 3, clause (24).
" " to present for registration, stamp on, schedule II., No. 13.
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Price of vernacular versions of Act, sec. 51.
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" person to pay duty on, sec. 6.
" brought to Collector on unstamped or insufficiently stamped paper, sec. 39.
" payable otherwise than on demand, stamp on, schedule I., No. 2.
" payable on demand, stamp on, schedule II., No. 1.
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'Property' defined, sec. 3, clause (26).
" within British India, instruments relating to, *ib.*, clause (2).
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" institution and conduct of, sec. 43.
'Protest' defined, sec. 3, clause (27).
" of bill or note, stamp on, schedule II., No. 24.
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" " stamp on, schedule II., No. 25.
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" stamp on, schedule II., No. 8.
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„ for sums paid for letters of allotment or on calls, *ib.*
„ endorsed on or contained in duly stamped instrument, exempt, *ib.*, clause (3).
„ by or on behalf of Government, exempt, *ib.*, clause (15).
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„ for money exceeding twenty rupees, stamp on, schedule II., No. 7.
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Reconveyance of mortgagd property, stamp on, schedule II., No. 27.
Reference to High Court, sec. 41.
„ back to Revenue Authority, *ib.*, clause *(c)*.
Refund in case of useless or spoiled stamped paper, sec. 45.
Refusal to give receipt, sec. 27, clause *(b)*.
„ of party whose signature is required to writing on stamped paper, sec. 46.
„ of office or trust granted by writing on stamped paper, *ib.*
Registering officer not to register instruments not duly stamped, sec. 17.
„ „ to impound unstamped instrument and send it to Collector, sec 23.
Registration of penalties levied by Civil Courts on unstamped instruments, sec. 21.
„ of instrument afterwards endorsed by Collector, sec. 40.
'Release' defined, sec. 3, clause (30).
„ stamp on, schedule II., No. 30.
Remission of penalty by Collector, sec. 24, clause *(b)*.
„ of penalties by Chief Controlling Revenue Authority, sec. 42.
Remuneration of stamp-vendors, sec. 48.
Repeal of enactments, sec. 2, and schedule III.
'Respondentia-bond' defined, sec. 3, clause (31).
„ person to pay duty on, sec. 6.
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Return to Collector of money received by Civil Court under Stamp Act, sec. 21.
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Set of bills or marine policies, penalty for not drawing whole number of, sec. 32.
'Settlement' defined, sec. 3, clause (32).
„ person to pay duty on, sec. 6.
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„ „ rules for sale of, sec. 48.
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Stamp-sellers, remuneration of, sec. 48.
„ penalty on, *ib.*
Stock, see *Certificate.*
Subordinate Magistrate of first class, jurisdiction of, sec. 44.

Suit where consideration is not stated, sec. 47.
Superintendent of Stamps may denote stamp-duty, sec. 5.
Surrender of land by ryot exempt, sec. 15, clause (11).
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Trust, see *Declaration*, *Refusal*.
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ACT VII. OF 1870.

THE COURT FEES' ACT.

(Received the assent of the Governor General on the 11th March 1870.)

CHAPTER I.

PRELIMINARY.

Short title.

I.—This Act may be called "The Court Fees' Act, 1870:"

Extent of Act.

It extends to the whole of British India;

Commencement of Act.

And it shall come into force on the first day of April 1870.

Repeal of enactments.

II.—On and after that day, the enactments mentioned in the first part of the third schedule hereto annexed shall be wholly repealed, and the enactments mentioned in the second part of the same schedule shall be repealed to the extent specified therein.

CHAPTER II.

FEES IN THE HIGH COURTS AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY TOWNS.

Levy of fees in High Courts on their original sides.

III.—The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by Statute twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, section fifteen,

or chargeable in each of such Courts under No. eleven of the first, and Nos. seven, twelve, fourteen, sixteen, twenty and twenty-one of the second, schedule to this Act annexed;

Levy of fees in Presidency Small Cause Courts.

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency Towns and their several offices;

shall be collected in manner hereinafter appearing.

Fees on documents filed, &c., in High Courts in their extra-

IV.—No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High

Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction; ordinary jurisdiction.

or in the exercise of its extraordinary original criminal jurisdiction;

or in the exercise of its jurisdiction as regards appeals from the judgment of two or more Judges of the said Court, or of a Division Court; In their appellate jurisdiction.

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

or in the exercise of its jurisdiction as a Court of reference or revision; As Courts of reference and revision.

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

V.—When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf. Procedure in case of difference as to necessity or amount of fee.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the First Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

CHAPTER III.

FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

VI.—Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such Fees on documents filed, &c., in Mofussil Courts or in public offices.

document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Computation of fees payable in certain suits.

VII.—The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :—

for money :

i. In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)—according to the amount claimed :

for maintenance and annuities :

ii. In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year :

for other movable property having a market-value :

iii. In suits for movable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint :

iv. In suits—

for movable property of no market-value :

(a) for movable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

to enforce a right to share in joint family property :

(b) to enforce the right to share in any property on the ground that it is joint family property,

for a declartory decree and consequentialrelief :

(c) to obtain a declaratory decree or order, where consequential relief is prayed,

for an injunction :

(d) to obtain an injunction,

for easements :

(e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts :

(f) for accounts —

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought, and the provisions of the Code of Civil Procedure, section thirty-one, shall apply as if, for the word 'claim,' the words 'relief sought,' were substituted.

for possession of land, houses and gardens :

v. In suits for the possession of land, houses and gardens—according to the value of the subject-matter ; and such value shall be deemed to be—

where the subject-matter is land, and—

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government,

or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue,

and such revenue is permanently settled—

ten times the revenue so payable:

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid;

and such revenue is settled, but not permanently—

five times the revenue so payable:

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits:

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood:

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as abovementioned—the market-value of the land:

Provided that, in the territories subject to the Governor of Bombay in Council, the value of the land shall be deemed to be— Proviso as to Bombay Presidency.

(I.)—where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government—a sum equal to five times the survey-assessment;

(II.)—where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten times the survey-assessment; and

(III.)—where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment, or the portion of assessment, so remitted :

Explanation.—The word 'estate,' as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or a farmer or ryot shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue.

for houses and gardens :

(e) Where the subject-matter is a house or garden—according to the market-value of the house or garden :

to enforce a right of pre-emption :

vi. In suits to enforce a right of pre-emption—according to the value (computed in accordance with paragraph v. of this section) of the land, house or garden in respect of which the right is claimed :

for interest of assignee of land-revenue :

vii. In suits for the interest of an assignee of land-revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint :

to set aside an attachment :

viii. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached :

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest :

to redeem :

ix. In suits against a mortgagee for the recovery of the property mortgaged,

to foreclose :

and in suits by a mortgagee to foreclose the mortgage,

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage ;

for specific performance :

x. In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration :

(b) of a contract of mortgage—according to the amount agreed to be secured :

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term;

(d) of an award—according to the amount or value of the property in dispute:

xi. In the following suits between landlord and tenant:— between landlord and tenant

(a) for the delivery by a tenant of the counterpart of a lease,

(b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

(d) to contest a notice of ejectment,

(e) to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, and

(f) for abatement of rent—

according to the amount, of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

VIII.—The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes, shall be computed according to the difference between the amount awarded and the amount claimed by the appellant. Fee on memorandum of appeal against order relating to compensation.

IX.—If the Court sees reason to think that the annual nett profits or the market-value of any such land, house or garden as is mentioned in section seven, paragraphs five and six, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court. Power to ascertain nett profits or market-value.

X. i.—If in the result of any such investigation the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee: but if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated: Procedure where nett profits or market-value wrongly estimated.

ii. In such case the suit shall be stayed until the additional fee is paid.

If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed:

iii. Section one hundred and eighty of the Code of Civil Procedure shall be construed as if the words 'the market-value of any property or' were inserted after the word 'ascertaining,' and as if the words 'or annual nett profits' were inserted after the word 'damages.'

Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.

XI.—In suits for mesne profits or for immovable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

Decision of questions as to valuation.

XII i.—Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal, shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit:

ii. But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section ten, paragraph ii., shall apply.

Refund of fee paid on memorandum of appeal.

XIII.—If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section three hundred and fifty-one of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject matter of the suit, the

certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

Refund of fee on application for review of judgment.

XIV.—Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's *laches*, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

Refund where Court reverses or modifies its former decision on ground of mistake.

XV.—Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the plaint or memorandum of appeal* as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. one, clause *(b)* or clause *(d)*.

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

Additional fee where respondent takes objection to unappealed part of decree.

XVI.—When any appeal is presented to a Civil Court, not against the whole of a decision, but only against so much thereof as relates to a portion of the subject-matter of the suit, and, on the hearing of such appeal, the respondent takes, under Section three hundred and forty-eight of the Code of Civil Procedure, an objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent shall have paid the additional fee which would have been payable had the appeal comprised the part of the decision so objected to.

Multifarious suits.

XVII.—Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this Section shall be deemed to affect the power conferred by the Code of Civil Procedure, Section nine.

Written examinations of complainants.

XVIII.—When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police officers may arrest without a warrant, and who has not already presented a petition on which a fee has been

* "Application" substituted for words "plaint and memorandum of appeal" in Section 15 above, *vide* Act XX. of 1870.

levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

Exemption of certain documents.

XIX. Nothing contained in this Act shall render the following documents chargeable with any fee :—

i. Power-of-attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer or private of Her Majesty's army not in civil employment.

ii. Declarations mentioned in Section cxviii. and Section clxiv. of the Code of Civil Procedure.

iii. Written statements called for by the Court after the first hearing of a suit.

iv. Plaint presented to a Military Court of Requests and petition for execution of a decree of such Court.

v. Plaints in suits tried by village Munsifs in the Presidency of Fort St. George.

vi. Plaints and processes in suits before District Panchâyats in the same Presidency.

vii. Plaints in suits before Collectors under Madras Regulation XII. of 1816.

viii. Probate of a Will, letters of administration, and certificate mentioned in the first schedule to this Act annexed, No. twelve, where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

ix. Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land, or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

x. Application relating to a supply for irrigation of water belonging to Government.

xi. Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled but not permanently.

xii. Application for service of notice of relinquishment of land or of enhancement of rent.

xiii. Written authority to an agent to distrain.

xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

xvi. Petition, application, charge, or information respecting any offence, when presented, made or laid to or before a Police officer, or to or before the Heads of Villages or the Village Police in the territories respectively subject to the Governors in Council of Madras and Bombay.

xvii. Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

xviii. Complaint of a public servant (as defined in the Indian Penal Code), a Municipal officer, or an officer or servant of a Railway Company.

xix. Application for permission to cut timber in Government forests, or otherwise relating to such forests.

xx. Application for the payment of money due by Government to the applicant.

xxi. Petition of appeal against the chaukídárí assessment under Act No. XX. of 1856, or against any municipal tax.

xxii. Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

xxiii. Petitions presented to the Special Commissioner appointed under Bengal Act No. II. of 1869 *(to ascertain, regulate and record certain tenures in Chota Nagpore).*

xxiv. Petitions under the fourteenth and fifteenth of Victoria, chapter forty *(An Act for Marriages in India),* Section v., or under Act No. V. of 1852, Section ix.

CHAPTER IV.

PROCESS FEES.

Rules as to costs of processes.

XX.—The High Court shall, as soon as may be, make rules as to the following matters:—

i. the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Courts established within the local limits of such jurisdiction :

ii. the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police officers may arrest without a warrant; and

iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

Confirmation and publication of rules.

All such rules, alterations and additions shall, after being confirmed by the Local Government, and sanctioned by the Governor-General of India in Council, be published in the local official *Gazette*, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

Tables of process-fees.

XXI.—A Table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Number of peons in District and subordinate Courts.

XXII.—Subject to rules to be made by the High Court and approved by the Local Government and the Governor-General of India in Council,

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

Number of peons in Mofussil Small Cause Courts.

and for the purposes of this Section, every Court of Small Causes established under Act No. XI. of 1865 *(to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature)* shall be deemed to be subordinate to the Court of the District Judge.

Number of peons in Revenue Courts.

XXIII.—Subject to rules to be framed by the Chief Controlling Revenue Authority and approved by the Local Government and the Governor-General of India in Council, every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

XXIV.—Every process served or executed under this chapter shall be held to be a process within the meaning of Section clxxxviii. of the Code of Civil Procedure, and of Section ii. of Act No. XXIII. of 1861 *(to amend Act VIII. of 1859)*.

Process served under this chapter to be held process served under Civil Procedure Code.

CHAPTER V.

OF THE MODE OF LEVYING FEES.

XXV.—All fees referred to in Section iii. or chargeable under this Act shall be collected by stamps.

Collection of fees by stamps.

XXVI.—The stamps used to denote any fee chargeable under this Act shall be impressed, or adhesive, or partly impressed and partly adhesive, as the Governor-General of India in Council may, by notification in the *Gazette of India*, from time to time direct.

Stamps to be impressed or adhesive.

XXVII.—The Local Government may, from time to time, make rules for regulating—

Rules for supply, number, renewal and keeping accounts of stamps.

(a) the supply of stamps to be used under this Act,

(b) the number of stamps to be used for denoting any fee chargeable under this Act,

(c) the renewal of damaged or spoiled stamps, and

(d) the keeping accounts of all stamps used under this Act:

Provided that, in the case of stamps used under Section iii. in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official *Gazette*, and shall thereupon have the force of law.

XXVIII.—No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

Stamping documents inadvertently received.

But if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and on such document being stamped ac-

cordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

Amended document.

XXIX.—Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Cancellation of stamp.

XXX.—No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VI.

MISCELLANEOUS.

Repayment of fees paid on applications to Criminal Courts.

XXXI. i.—Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which Police officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid on such application or petition.

ii. In the case mentioned in Section xviii., the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

iii. When the complainant has paid fees for serving processes in either of the cases mentioned in the first and Second paragraphs of this Section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

iv. All fees ordered to be repaid under this Section may be recovered as if they were fines imposed by the Court.

Amendments of Act VIII of 1859, Sections 308, 309, 371, 373

XXXII.—The Code of Civil Procedure, Sections cccviii. and cccix. shall be read as if, for the words 'stamp-duty' and 'stamps,' the words and figures 'fees chargeable under the Court Fees' Act, 1870,' were substituted; Section cccxxi. of the same Code shall be read as if, for the words 'a stamp of the value,' the words 'the payment of the fee,' were substituted; and Section cccxxiii. of the same Code shall be read as if, for the words 'on a stamp paper

of the value,' the words 'and shall be chargeable with the fee,' were substituted; and as if, for the words 'for the stamp,' the words 'the fees,' were substituted.

And the Indian Income Tax Act, Section xx., shall be read as if, for the words 'the value of the said stamp,' the words 'the fee on the petition,' were substituted.

Admission in criminal cases of documents for which proper fee has not been paid.

XXXIII.—Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in Section iv. or Section vi. shall be deemed to prohibit such filing or exhibition.

Rules for sale of stamps.

XXXIV.—In the General Stamp Act, 1869, Section xlviii. shall be read as if, for the words and figures 'Act No. XXVI. of 1867 *(to amend the law relating to Stamp Duties)*,' the words and figures 'The Court Fees' Act, 1870,' were substituted.

Power to reduce or remit fees.

XXXV.—The Governor-General of India in Council may, from time to time, by notification in the *Gazette of India*, reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the first and second schedules to this Act annexed,

and may in like manner cancel or vary such order.

Saving of fees to certain officers of High Courts.

XXXVI.—Nothing in Chapters II. and V. of this Act applies to the commission payable to the Accountant General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

SCHEDULE I.

Ad valorem fees.

NUMBER.		PROPER FEE.
1. Plaint or memorandum of appeal (not otherwise provided for in this Act), presented to any Civil or Revenue Court, except those mentioned in section three*	When the amount or value of the subject-matter in dispute does not exceed five rupees	Six annas.
	When such amount or value exceeds five rupees, For every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees ...	Six annas.
	When such amount or value exceeds one hundred rupees, For every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees ...	Twelve annas.
	When such amount or value exceeds one thousand rupees, For every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees	Five rupees.
	When such amount or value exceeds five thousand rupees, For every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees ...	Ten rupees.
	When such amount or value exceeds ten thousand rupees, For every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees	Fifteen rupees.
	When such amount or value exceeds twenty thousand rupees, For every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees	Twenty rupees.
	When such amount or value exceeds thirty thousand rupees, For every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees	Twenty rupees.
	When such amount or value exceeds fifty thousand rupees, For every five thousand rupees, or part thereof, in excess of fifty thousand rupees	Twenty five rupees.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.	
2. Plaint or memorandum of appeal† in a suit for possession under Act No. XIV. of 1859 *(to provide for the limitation of suits)*, section fifteen 3. Petition under the Indian Registration Act, section fifty-three	... ...	A fee of one-half the amount prescribed in the foregoing scale.

* To ascertain the proper fee leviable on the institution of a suit, see the Table annexed to this schedule.

† Omit "memorandum of appeal" in No. 2, as amended by Act XX of 1870.

SCHEDULE I.—*(continued).*

Ad valorem fees.

NUMBER.		PROPER FEE.
4. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree	...	The fee leviable on the plaint or memorandum of appeal.
5. Application for review of judgment, if presented before the ninetieth day from the date of the decree	... ...	One-half of the fee leviable on the plaint or memorandum of appeal.
6 Copy or translation of a judgment or order not being, or having the force of, a decree	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding Officer of any Revenue Court or Office, or by any other Judicial or Executive Authority—	
	(a.)—If the amount or value of the subject-matter is fifty or less than fifty rupees ...	Four annas.
	(b.)—If such amount or value exceeds fifty rupees ...	Eight annas.
	When such judgment or order is passed by a High Court ...	One rupee.
7 Copy of a decree or order having the force of a decree	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(a.)—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees	Eight annas.
	(b.)—If such amount or value exceeds fifty rupees ...	One rupee.
	When such decree or order is made by a High Court	Four rupees.
8. Copy of any document liable to stamp-duty under the General Stamp Act, 1869, when left by any party to a suit or proceeding in place of the original withdrawn	*(a.)*—When the stamp-duty chargeable on the original does not exceed eight annas	The amount of the duty chargeable on the original.
	(b.)—In any other case ...	Eight annas.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division	For every three hundred and sixty words or fraction of three hundred and sixty words	Eight annas.

BENGAL SECRETARIAT LIBRARY.

SCHEDULE I.—*(continued).*

Ad valorem fees.

NUMBER.		PROPER FEE.
10. Certificate of administration granted under Act No. XL. of 1858 *(for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal)*, or under Act No. XX. of 1864 *(for making better provision for the care of the persons and property of minors in the Presidency of Bombay)*	If the amount or value of the property in respect to which such certificate is granted does not exceed five hundred rupees ...	Five rupees.
	If such amount or value exceeds five hundred rupees but not one thousand rupees	Ten rupees.
	And for every one thousand rupees, or part thereof, in excess of one thousand rupees	Five rupees.
11. Probate of a will or letters of administration with or without will annexed 12. Certificate granted under Act No. XXVII. of 1860 *(for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons)*, or under Bombay Regulation VIII. of 1827 *(to provide for the formal recognition of Heirs, Executors and Administrators, and for the appointment of Administrators and Managers of Property by the Courts)*	If the amount or value of the property in respect of which the probate or letters or certificate shall be granted exceeds one thousand rupees	Two per centum on such amount or value.
	NOTE.—The person to whom any such certificate is granted, or his representative, shall, after the expiration of twelve months from the date of such certificate and thereafter whenever the Court granting such certificate requires him so to do, file a statement on oath of all monies recovered or realised by him under such certificate. If the monies so recovered or realised exceed the amount of debts or other property as sworn to by the person to whom the certificate is granted, the Court may cancel the same and order such person to take out a fresh certificate and pay the fee prescribed by this schedule for such excess. In default of filing such statement within the time allowed, the Court may cancel the certificate.	

Table of rates of ad valorem fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.	
Rs.	Rs.	Rs.	A.	Rs.	Rs.	Rs.	A.
.....	5	0	6	140	150	11	4
5	10	0	12	150	160	12	0
10	15	1	2	160	170	12	12
15	20	1	8	170	180	13	8
20	25	1	14	180	190	14	4
25	30	2	4	190	200	15	0
30	35	2	10	200	210	15	12
35	40	3	0	210	220	16	8
40	45	3	6	220	230	17	4
45	50	3	12	230	240	18	0
50	55	4	2	240	250	18	12
55	60	4	8	250	260	19	8
60	65	4	14	260	270	20	4
65	70	5	4	270	280	21	0
70	75	5	10	280	290	21	12
75	80	6	0	290	300	22	8
80	85	6	6	300	310	23	4
85	90	6	12	310	320	24	0
90	95	7	2	320	330	24	12
95	100	7	8	330	340	25	8
100	110	8	4	340	350	26	4
110	120	9	0	350	360	27	0
120	130	9	12	360	370	27	12
130	140	10	8	370	380	28	8

Table of rates of ad valorem fees, &c.—(continued.)

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.	
Rs.	Rs.	Rs.	A.	Rs.	Rs.	Rs.	As.
380	390	29	4	620	630	47	4
390	400	30	0	630	640	48	0
400	410	30	12	640	650	48	12
410	420	31	8	650	660	49	8
420	430	32	4	660	670	50	4
430	440	33	0	670	680	51	0
440	450	33	12	680	690	51	12
450	460	34	8	690	700	52	8
460	470	35	4	700	710	53	4
470	480	36	0	710	720	54	0
480	490	36	12	720	730	54	12
490	500	37	8	730	740	55	8
500	510	38	4	740	750	56	4
510	520	39	0	750	760	57	0
520	530	39	12	760	770	57	12
530	540	40	8	770	780	58	8
540	550	41	4	780	790	59	4
550	560	42	0	790	800	60	0
560	570	42	12	800	810	60	12
570	580	43	8	810	820	61	8
580	590	44	4	820	830	62	4
590	600	45	0	830	840	63	0
600	610	45	12	840	850	63	12
610	620	46	8	850	860	64	8

Table of rates of ad valorem fees, &c.—(continued.)

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.	
Rs.	Rs.	Rs.	A.	Rs.	Rs.	Rs.	A.
860	870	65	4	2,000	2,100	130	0
870	880	66	0	2,100	2,200	135	0
880	890	66	12	2,200	2,300	140	0
890	900	67	8	2,300	2,400	145	0
900	910	68	4	2,400	2,500	150	0
910	920	69	0	2,500	2,600	155	0
920	930	69	12	2,600	2,700	160	0
930	940	70	8	2,700	2,800	165	0
940	950	71	4	2,800	2,900	170	0
950	960	72	0	2,900	3,000	175	0
960	970	72	12	3,000	3,100	180	0
970	980	73	8	3,100	3,200	185	0
980	990	74	4	3,200	3,300	190	0
990	1,000	75	0	3,300	3,400	195	0
1,000	1,100	80	0	3,400	3,500	200	0
1,100	1,200	85	0	3,500	3,600	205	0
1,200	1,300	90	0	3,600	3,700	210	0
1,300	1,400	95	0	3,700	3,800	215	0
1,400	1,500	100	0	3,800	3,900	220	0
1,500	1,600	105	0	3,900	4,000	225	0
1,600	1,700	110	0	4,000	4,100	230	0
1,700	1,800	115	0	4,100	4,200	235	0
1,800	1,900	120	0	4,200	4,300	240	0
1,900	2,000	125	0	4,300	4,400	245	0

Table of rates of ad valorem fees, &c.—(continued.)

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.	
Rs.	Rs.	Rs.	A.	Rs.	Rs.	Rs.	A.
4,400	4,500	250	0	9,500	9,750	465	0
4,500	4,600	255	0	9,750	10,000	475	0
4,600	4,700	260	0	10,000	10,500	490	0
4,700	4,800	265	0	10,500	11,000	505	0
4,800	4,900	270	0	11,000	11,500	520	0
4,900	5,000	275	0	11,500	12,000	535	0
5,000	5,250	285	0	12,000	12,500	550	0
5,250	5,500	295	0	12,500	13,000	565	0
5,500	5,750	305	0	13,000	13,500	580	0
5,750	6,000	315	0	13,500	14,000	595	0
6,000	6,250	325	0	14,000	14,500	610	0
6,250	6,500	335	0	14,500	15,000	625	0
6,500	6,750	345	0	15,000	15,500	640	0
6,750	7,000	355	0	15,500	16,000	655	0
7,000	7,250	365	0	16,000	16,500	670	0
7,250	7,500	375	0	16,500	17,000	685	0
7,500	7,750	385	0	17,000	17,500	700	0
7,750	8,000	395	0	17,500	18,000	715	0
8,000	8,250	405	0	18,000	18,500	730	0
8,250	8,500	415	0	18,500	19,000	745	0
8,500	8,750	425	0	19,000	19,500	760	0
8,750	9,000	435	0	19,500	20,000	775	0
9,000	9,250	445	0	20,000	21,000	795	0
9,250	9,500	455	0	21,000	22,000	815	0

Table of rates of ad valorem fees, &c.—(continued.)

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.	
Rs.	Rs.	Rs.	A.	Rs.	Rs.	Rs.	A.
22,000	23,000	835	0	80,000	85,000	1,350	0
23,000	24,000	855	0	85,000	90,000	1,375	0
24,000	25,000	875	0	90,000	95,000	1,400	0
25,000	26,000	895	0	95,000	1,00,000	1,425	0
26,000	27,000	915	0	1,00,000	1,05,000	1,450	0
27,000	28,000	935	0	1,05,000	1,10,000	1,475	0
28,000	20,000	955	0	1,10,000	1,15,000	1,500	0
29,000	30,000	975	0	1,15,000	1,20,000	1,525	0
30,000	32,000	995	0	1,20,000	1,25,000	1,550	0
32,000	34,000	1,015	0	1,25,000	1,30,000	1,575	0
34,000	36,000	1,035	0	1,30,000	1,35,000	1,600	0
36,000	38,000	1,055	0	1,35,000	1,40,000	1,625	0
38,000	40,000	1,075	0	1,40,000	1,45,000	1,650	0
40,000	42,000	1,095	0	1,45,000	1,50,000	1,675	0
42,000	44,000	1,115	0	1,50,000	1,55,000	1,700	0
44,000	46,000	1,135	0	1,55,000	1,60,000	1,725	0
46,000	48,000	1,155	0	1,60,000	1,65,000	1,750	0
48,000	50,000	1,175	0	1,65,000	1,70,000	1,775	0
50,000	55,000	1,200	0	1,70,000	1,75,000	1,800	0
55,000	60,000	1,225	0	1,75,000	1,80,000	1,825	0
60,000	65,000	1,250	0	1,80,000	1,85,000	1,850	0
65,000	70,000	1,275	0	1,85,000	1,90,000	1,875	0
70,000	75,000	1,300	0	1,90,000	1,95,000	1,900	0
75,000	80,000	1,325	0	1,95,000	2,00,000	1,925	0

Table of rates of ad valorem fees, &c.—(continued.)

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.	
Rs.	Rs.	Rs.	A.	Rs.	Rs.	Rs.	A.
2,00,000	2,05,000	1,950	0	3,10,000	3,15,000	2,500	0
2,05,000	2,10,000	1,975	0	3,15,000	3,20,000	2,525	0
2,10,000	2,15,000	2,000	0	3,20,000	3,25,000	2,550	0
2,15,000	2,20,000	2,025	0	3,25,000	3,30,000	2,575	0
2,20,000	2,25,000	2,050	0	3,30,000	3,35,000	2,600	0
2,25,000	2,30,000	2,075	0	3,35,000	3,40,000	2,625	0
2,30,000	2,35,000	2,100	0	3,40,000	3,45,000	2,650	0
2,35,000	2,40,000	2,125	0	3,45,000	3,50,000	2,675	0
2,40,000	2,45,000	2,150	0	3,50,000	3,55,000	2,700	0
2,45,000	2,50,000	2,175	0	3,55,000	3,60,000	2,725	0
2,50,000	2,55,000	2,200	0	3,60,000	3,65,000	2,750	0
2,55,000	2,60,000	2,225	0	3,65,000	3,70,000	2,775	0
2,60,000	2,65,000	2,250	0	3,70,000	3,75,000	2,800	0
2,65,000	2,70,000	2,275	0	3,75,000	3,80,000	2,825	0
2,70,000	2,75,000	2,300	0	3,80 000	3,85,000	2,850	0
2,75,000	2,80,000	2,325	0	3,85,000	3,90,000	2,875	0
2,80,000	2,85,000	2,350	0	3,90,000	3,95,000	2,900	0
2,85,000	2,90,000	2,375	0	3,95,000	4,00,000	2,925	0
2,90,000	2,95,000	2,400	0	4,00,000	4,05,000	2,950	0
2,95,000	3,00,000	2,425	0	4,05,000	4,10,000	2,975	0
3,00,900	3,05,000	2,450	0	4,10,000	.....	3,000	0
3,05,000	3,10,000	2,475	0				

SCHEDULE II.

Fixed Fees.

NUMBER.		PROPER FEE.
1. Application or petition ...	*(a.)*—When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings; or when presented to any officer of Land Revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement; or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement; or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III. of 1859, or to any Court of Small Causes constituted under Act No. XI. of 1865, or under Act No. XVI. of 1868, section xx. or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees; or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or Office	One anna.
	(b.)—When containing a complaint or charge of any offence other than an offence for which Police officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court; or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capa-	Eight annas.

SCHEDULE II.—*(continued).*

Fixed Fees.

NUMBER.		PROPER FEE.
1. Application or petition—*(continued)* ...	city, and not otherwise provided for by this Act ; or to deposit in Court revenue or rent ; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant	Eight annas.
	(c.)—When presented to a Chief Commissioner or other chief controlling revenue or executive authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act ...	One rupee.
	(d.)—When presented to a High Court ...	Two rupees.
2. Application for leave to sue as a pauper ...	... ...	Eight annas.
3. Application for leave to appeal as a pauper ...	*(a.)*—When presented to a District Court...	One rupee.
	(b.)—When presented to a Commissioner or a High Court ...	Two rupees.
4. Plaint or memorandum of appeal in a suit to obtain possession under Act No. XVI. of 1838, or Bombay Act No. V. of 1864 *(to give Mamlatdar's Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of law)* ... 5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy ... 6. Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authority ... 7. Undertaking under section xlix. of the Indian Divorce Act ... 8. Petition of objection to assessment under the Indian Income Tax Act ...	... ...	Eight annas.
9. Petition of appeal under the Indian Income Tax Act, section xxi.	... ...	One rupee.
10. Mukhtárnáma or Wakálatnáma.	When presented for the conduct of any one case—	

SCHEDULE II.—*(continued).*

Fixed Fees.

NUMBER.		PROPER FEE.
	(a.)—to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Colllector or Magistrate, or other executive officer, except such as are mentioned in clauses *(b)* and *(c)* of this Number	Eight annas.
	(b.)—to a Commissioner of Revenue, Circuit or Customs, or to any officer charged with the executive administration of a Division, not being the chief revenue or executive authority ...	One rupee.
	(c.)—to a High Court, Chief Commissioner, Board of Revenue, or other chief controlling revenue or executive authority	Two rupees.
11. Memorandum of appeal when the appeal is not from an order rejecting a plaint or from a decree or an order having the force of a decree, and is presented—	*(a.)*—to any Civil Court other than a High Court, or to any Revenue Court or executive officer other than the High Court or chief controlling revenue or executive authority ...	Eight annas.
	(b.)—to a High Court or Chief Commissioner, or other chief controlling executive or revenue authority ...	Two rupees.
12. Caveat ...		
13. Application under Act No. X. of 1859, section xxvi., or Bengal Act No. VI. of 1862, section ixi., or Bengal Act No. VIII. of 1869, section vii. ...	... ...	Five rupees.
* 14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866		
* 15. Plaint or memorandum of appeal in a suit to obtain possession of a wife		
16. Administration-bond ...	... ...	Eight rupees.
* 17. Plaint or memorandum of appeal in each of the following suits :—		
i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court :	... ...	Ten rupees.

* Suits under Sections xiv., xv., and xvii., to be transferred to and tried by Zillah Judge and submitting mofussil weekly statement to Zillah Judge for the same.—C. O. No. 11., dated 14th May 1870.

SCHEDULE II.—*(continued).*

Fixed Fees.

NUMBER.		PROPER FEE.
ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates : iii. to obtain a declaratory decree where no consequential relief is prayed : iv. to set aside an award : v. to set aside an adoption : vi. every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act ..	... ...	Ten rupees.
18. Application under section cccxxvi. of the Code of Civil Procedure ... 19. Agreement under section cccxxviii. of the same Code ... 20. Every petition under the Indian Divorce Act except petitions under section xliv. of the same Act, and every memorandum of appeal under section lv. of the same Act ... 21. Plaint or memorandum of appeal under the Pársí Marriage and Divorce Act, 1865 ...	... ...	Twenty rupees.

SCHEDULE III.

ENACTMENTS REPEALED.

PART I.

Acts wholly repealed.

Number and year.	Title.
Act No. XVII. of 1848 ...	An Act for substituting Stamp Duties instead of Institution Fees in the Courts of the District Moonsiffs in the Presidency of Madras; and for refunding Stamp Duties on Plaints in certain cases.
Act No. X. of 1862 ...	An Act to consolidate and amend the law relating to Stamp Duties.
Act No. XI. of 1863 ...	An Act to consolidate and amend the law relating to the employment and remuneration of Peons for the service and execution of Civil Process.
Act No. XVIII. of 1865 ...	An Act to amend Act No. X. of 1862 (to consolidate and amend the law relating to Stamp Duties).
Act No. XV. of 1868 ...	The High Court Fees' Act, 1868.
Bengal Act No. V. of 1863	An Act to amend the law relating to the employment and remuneration of Peons for the service and execution of the process of the Civil and Revenue Courts.

PART II.

Acts and regulations partly repealed.

Number and year.	Title.	Extent of repeal.
Act No. V. of 1852 ...	An Act for giving effect to the provisions of an Act of Parliament, passed in the 15th year of the reign of Her present Majesty, intituled "An Act for Marriages in India."	In section ix., the words 'which may in all cases be on unstamped paper' Section xxv.
Act No. XXXIII. of 1852 ..	An Act to facilitate the enforcement of judgments in places beyond the jurisdiction of the Courts pronouncing the same.	Section ix.
Act No. VIII. of 1859 ...	An Act for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter.	Section xcviii., from and including the words 'On the application,' to the end of the section. In section cxviii., the words 'on unstamped paper' In section cxix., the words 'and be written upon stamp paper of the value prescribed for petitions to the Court where a stamp is required for petitions'

SCHEDULE III.—*(continued).*

Enactments repealed.

Number and year.	Title.	Extent of repeal.
Act No. VIII. of 1859 —*(continued)* ...		Section cxxii., from and including the words 'When such statements,' to the end of the section. In section clxiv., the words 'on unstamped paper' In section ccxcix., the words 'on a stamp paper of the value of eight annas' In section cccxxvi., the words 'on a stamp paper of one-fourth of the value prescribed for plaints in suits' In section cccxxvii., the words 'shall be written on the stamp paper required for petitions to the Court where a stamp is required for petitions by any law for the time being in force, and' In section cccxxviii., the words 'which shall be subject to the same Stamp Duty as prescribed for plaints in suits,' In section ccclxviii., the words 'on a stamp paper of the value of one rupee if the appeal lie to the District Court, and on a stamp paper of the value of two rupees if the appeal lie to the Sudder Court,' Section ccclxxvii., from and including the words 'If the application,' to the end of the section.
Act No. X. of 1859 ...	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William.	In sections xiii. and cxx., the words '(which may be on plain paper)' In section xix., the words 'on plain paper' So much of sections clvi. and clxi. as relates to the stamp to be borne by a petition of appeal.
Act No. XXIII. of 1861 ...	An Act to amend Act VIII. of 1859 (for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter).	The last clause of section xii.
Act No. XX. of 1862 ...	An Act to provide for the levy of fees and Stamp Duties in the High Court of Judicature at Fort William in Bengal, and to suspend the operation of certain	The preamble down to and including the words 'appointed to the said High Court; and' Section ii.

SCHEDULE III.—*(continued).*

Enactments repealed.

Number and year.	Title.	Extent of repeal.
Act No. XX. of 1862 —*(continued)* ...	sections of Act VIII. of 1859 in the said High Court.	
Act No. I. of 1863 ...	An Act to define the jurisdiction and to regulate the procedure of the Courts of Civil Judicature in British Burmah, and to provide for the extension of certain Acts to the said Territory.	In section xvii., the last sentence. In section xx., the words 'shall be written on stamp paper of the value of one rupee if the appeal lie to the Court of the Deputy Commissioner, and on stamp paper of the value of two rupees if the appeal lie to the Court of the Commissioner or to the Court of the Chief Commissioner, and'
Act No. XX. of 1863 ...	An Act to enable the Government to divest itself of the management of Religious Endowments.	Section xxvi. In section xviii., the words 'The application may be made upon unstamped paper' and 'In calculating the costs at the termination of the suit, the Stamp Duty on the preliminary application shall be estimated, and shall be added to the costs of the suit.'
Act No. XXI. of 1863 ...	An Act to constitute Recorders' Courts for the Towns of Akyab, Rangoon, and Moulmein, in British Burmah; and to establish Courts of Small Causes in the said Towns.	Section xlvi.
Act No. XXXII. of 1863...	An Act to continue in force Act XX. of 1862 (to provide for the levy of fees and Stamp Duties in the High Court of Judicature at Fort William in Bengal, and to suspend the operation of certain sections of Act VIII. of 1859 in the said High Court).	So far as it relates to fees and Stamp Duties.
Act No. X. of 1865 ...	The Indian Succession Act, 1865	Section cccxxix. and the schedule.
Act No. XI. of 1865 ...	An Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature.	In section xlvii. the words 'The twenty-sixth section of Act X of 1862 *(to consolidate and amend the law relating to Stamp Duties)*, and,'
Act No. XV. of 1865 ...	The Pársí Marriage and Divorce Act, 1865.	Section xxxix.

SCHEDULE III.—*(continued).*

Enactments repealed.

Number and year.	Title.	Extent of repeal.
Act No. XX of 1866 ...	The Indian Registration Act, 1866.	In section liii., the words 'shall, where a stamp is required by law, bear a stamp of one-fourth the value prescribed for a plaint in such a suit, and' In section lxxxiv., the words 'shall, where a stamp is required by law, bear a stamp of eight annas, and'
Act No. XXI. of 1866 ...	The Native Converts' Marriage Dissolution Act, 1866.	In section vii., the words 'shall bear a stamp of two rupees, and'
Act No. XXVI. of 1867 ...	An Act to amend the law relating to Stamp Duties.	The whole Act, except the words 'No Advocate of any High Court shall be required to file or present a mukhtárnamá or wakálatnáma or any other document empowering him to act.'
Act No. XIX. of 1868 ...	The Oudh Rent Act, 1868 ...	In section xv., the words 'the application shall bear a stamp of eight annas' In section xxv., the words 'on a paper bearing a stamp of eight annas' In section xxx, the words 'on a paper bearing a stamp of eight annas'
Act No. XXVIII. of 1868...	The Panjáb Tenancy Act, 1868...	In sections xvii. and xl., the words 'on a paper bearing a stamp of eight annas' Section xlii.
Act No. IV. of 1869 ...	The Indian Divorce Act ...	In section xlvii., the words 'or of reversal of judicial separation, or for restitution of conjugal rights, or for damages, shall bear a stamp of five rupees, and' and the words 'in the first, second and third cases mentioned in this section,' In section xlix., the words 'shall bear a stamp of eight annas, and'
Act No. IX. of 1869 ...	The Indian Income Tax Act ...	In section xix., the words 'it shall bear a stamp of eight annas,' In section xxi, the words 'shall bear a stamp of one rupee, and'
Bengal Regulation VI of 1823.	A Regulation for authorizing the institution of summary suits to enforce the execution of certain written engagements for the cultivation and delivery of the	Sections vii. and viii.

SCHEDULE III.—*(continued).*

Enactments repealed.

Number and year.	Title.	Extent of repeal.
Bengal Regulation VI. of 1823—*continued.*	Indigo Plant, and for declaring certain principles in regard to the same.	
Bengal Act No. VI. of 1862	An Act to amend Act X. of 1859 (to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal).	In section v., the passage beginning with the words 'upon paper' and ending with 'deposit' In section xiii., the passage beginning with the words 'and be written'
Bengal Act No. II. of 1869	An Act to ascertain, regulate and record certain tenures in Chota-Nagpore.	Section xxii.
Bengal Act No. VIII. of 1869.	An Act to amend the procedure in suits between landlords and tenants.	In sections xiv. and lxxvi., the words '(which may be on plain paper)' In section xx., the words 'on plain paper'
Madras Regulation III. of 1802.	A Regulation for receiving, trying and deciding suits on complaints declared cognizable in the Courts of Adawlut established in the several zillahs immediately subject to the Presidency of Fort St. George.	Section xxi., from 'When' down to 'writing' (both inclusive)
Madras Regulation IV. of 1816.	A Regulation for declaring the head inhabitants of villages to be Moonsiffs in their respective villages, to hear and decide civil suits for sums of money, or other personal property, to a limited amount, and for defining their jurisdiction.	So much of section xxxii. as relates to fees on the institution of suits tried by Village Moonsiffs.
Madras Regulation V. of 1816.	A Regulation for authorizing Village Moonsiffs to assemble Village Panchâyets for the adjudication of civil suits for sums of money or other personal property, without limitation as to amount or value, within their respective jurisdictions, and for defining the powers and authority to be vested in such Village Panchâyets.	So much of sections x. and xiii. as relates to fees on the institution of suits tried by Village Panchâyets.
Madras Regulation VII. of 1816.	A Regulation for authorizing District Moonsiffs to assemble District Panchâyets for the adjudi-	So much of section x. as relates to fees on plaints and processes in suits before District Panchâyets.

SCHEDULE III.—*(continued).*

Enactments repealed.

Number and year.	Title.	Extent of repeal.
Madras Regulation VII. of 1816—*(continued).*	cation of civil suits for real and personal property, without limitation as to amount or value, within their respective jurisdictions, and for defining the powers and authority to be vested in such District Panchâyets.	
Madras Regulation XII. of 1816.	A Regulation for authorizing Collectors to refer claims regarding lands or crops, the validity of which claims may depend on the determination of a disputed boundary; as also certain disputes respecting the occupying, cultivating and irrigating of land, to be tried and determined by Village and District Panchâyets; and for prescribing the Rules under which the trial of such disputes shall be conducted, and the decisions of the Panchâyets carried into execution.	So much of section xi. as relates to fees on plaints before the Collector.
Madras Regulation XIV. of 1816.	A Regulation for amending and modifying the Rules which have been passed regarding the Office of Vakeel or Native Pleader in the Courts of Civil Judicature.	Section xxi., second clause.
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ACT VI OF 1871.

(Received the assent of His Excellency the Governor-General on the 10th February 1871.)

An Act to consolidate and amend the Law relating to the District and Subordinate Civil Courts in Bengal.

Preamble.

Whereas it is expedient to consolidate and amend the law relating to the District and Subordinate Civil Courts in the territories respectively under the Governments of the Lieutenant-Governors of the Lower and North-Western Provinces of the Presidency of Fort William in Bengal; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

I.—This Act may be called "The Bengal Civil Courts' Act, 1871."

Local extent.

It extends to the territories for the time being respectively under the Governments of the said Lieutenant-Governors, except such portions thereof as for the time being are not subject to the ordinary jurisdiction of the High Courts, and except the Jhansi Division.

Partial exclusion of Mofussil Small Cause Courts.

Except this Section and Sections xvii., xxix., and xxx., nothing herein contained applies to Courts of Small Causes established under Act No. XI. of 1865.

Commencement of Act.

This Act shall come into force on the passing thereof.

Repeal of enactments.

II.—The Regulations and Acts mentioned in the Schedule hereto annexed are repealed to the extent specified in the third column of such Schedule.

CHAPTER II.

CONSTITUTION OF CIVIL COURTS.

Number of District Judges.

III.—The number of District Judges to be appointed under this Act shall be fixed, and may, from time to time, be altered by the Local Government.

Number of

IV.—The number of Subordinate Judges and Munsifs to be appointed

under this Act in each District shall be fixed, and may, from time to time, be altered by the Local Government.

Subordinate Judges and Munsifs.

V.—Whenever the office of District Judge or Subordinate Judge under this Act is vacant, or whenever the Governor-General in Council has sanctioned an increase of the number of District Judges or Subordinate Judges, the Local Government shall supply such vacancy, or appoint such additional District Judges or Subordinate Judges, as the case may be.

Vacancies in District Judgeships.

VI.—Whenever the office of a Munsif is vacant, or when the Governor-General in Council has sanctioned an increase of the number of Munsifs, the High Court shall nominate such person as it thinks fit to be a Munsif, and the Local Government shall appoint him accordingly:

Vacancies in Munsifships.

Provided that the Local Government may, with the sanction of the Governor-General in Council, make rules as to the qualifications of persons to be appointed to the office of Munsif under this Act; and on such rules being made, no person shall be nominated to such office, unless he possesses the qualifications required by the said rules.

VII.—When the business pending before any District Judge requires the aid of Additional Judges for their speedy disposal, the Local Government may, upon the recommendation of the High Court, and subject to the sanction of the Governor-General in Council, appoint such Additional Judges, as may be requisite.

Additional Judges.

Such Additional Judges shall perform any of the duties of a District Judge under Chapter III. of this Act that the District Judge may, with the sanction of the High Court, assign to them, and, in the performance of such duties, they shall exercise the same powers as the District Judge.

VIII.—In the event of the death of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the station in which his Court is held, the Additional Judge, or, if there is no Additional Judge attached to such Court, the senior Subordinate Judge of the District shall, without relinquishing his ordinary duties, assume charge of the Judge's office,

Temporary charge of office of District Judge.

and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the issue of processes and the like functions,

and shall continue in charge of the office until it is resumed by the District Judge, or assumed by an officer duly appointed thereto.

IX.—In the event of the death of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence on leave when no person is appointed to act for him,

Transfer of proceedings on death, &c., Subordinate of Judge.

the District Judge may transfer all or any of the proceedings pending in the Court of such Subordinate Judge, either to his own Court, or to the Court of a Subordinate Judge (if any) under his control.

All proceedings transferred under this Section shall be disposed of as if they had been instituted in the Court to which they are so transferred.

Temporary charge of Munsif's office.

A District Judge, on the occurrence within his District of any vacancy in the office of Munsif, may, pending the action of the High Court under Section vi., appoint such person as he thinks fit to act in such office.

And he shall forthwith report to the High Court the occurrence of every such vacancy and such appointment.

Power to confer judicial powers on certain officers in Kachar, Assam, Chota Nagpur, and Kuch Behar.

X.—The Local Government may invest with the powers of any Court under this Act any officer in the District of Kachar and the Divisions of Assam, Chota Nagpur, and Kuch Behar.

Nothing in Sections iii. to ix. (inclusive), xxxii., xxxiii., and xxxiv., applies to any such officer. But all the other provisions of this Act apply, *mutatis mutandis*, to officers so invested.

Control of Civil Courts in a District.

XI.—The general control over all the Civil Courts in any District is vested in the District Judge, but subject to the superintendence of the High Court.

First District Judges, Additional Judges, Subordinate Judges, and Munsifs.

XII.—The present Judges of the Zillah Courts, Additional Judges, Subordinate Judges, and Munsifs shall be deemed to have been duly appointed to the offices the duties of which they have respectively discharged and shall be the first District Judges, Additional Judges, Subordinate Judges, and Munsifs under this Act.

Declaration of office.

XIII.—Every District Judge, Additional Judge, Subordinate Judge or Munsif appointed after the passing of this Act shall, previously to entering on the duties of his office, make and subscribe a solemn declaration according to the following form :—

"I, *A B*, appointed to the office of of , do solemnly declare that, in the trial and determination of all suits which may come under my cognizance, and in the execution of all the other duties of my office, I will act according to the best of my abilities and judgment without partiality, favor, or affection ; that I will not directly or indirectly receive, or knowingly allow any other person to receive, on my behalf, any money, effects, or property, on account of any suit that may come before me for decision, or on account of any public duty which I may have to execute.

I will strictly adhere to all the rules prescribed for my guidance, and I will, in all respects, truly and faithfully execute the trust reposed in me.

(Signed) *A B*,

District [*or* Additional *or* Subordinate] Judge of
[*or* Munsif of]"

Such declaration shall be made—

by a District Judge, either before his predecessor in such office, or before the Magistrate of the District,

by an Additional Judge, a Subordinate Judge or Munsif, before the District Judge, or the Magistrate of the District.

Seals of Courts.

XIV.—Every Court under this Act shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

District Judges, Subordinate Judges, and Munsifs to be deemed Civil Courts.

XV.—Every District Judge, Additional Judge, Subordinate Judge, and Munsif under this Act shall be deemed to be a Civil Court within the meaning of the Code of Civil Procedure and of this Act.

Power to fix sites of Court.

XVI.—The Local Government may fix, and, from time to time, alter the place or places at which any Court under this Act is to be held.

Vacation.

XVII.—Subject to such orders as may, from time to time, be issued by the Governor-General in Council, the High Court shall prepare a list of days to be observed in each year as close holidays in the Courts subordinate thereto.

Such list shall be published in the local official *Gazette*, and the said days shall be observed accordingly.

CHAPTER III.

ORDINARY JURISDICTION.

Power to fix local limits of jurisdiction.

XVIII.—The Local Government shall fix, and may, from time to time, vary the local limits of the jurisdiction of any Civil Courts under this Act:

Provided that, where more than one Subordinate Judge is appointed to any District, and where more than one Munsif is appointed to any Munsifi, the Judge of the District Court may assign to each such Subordinate Judge or Munsif the local limits of his particular jurisdiction within such District or Munsifi, as the case may be.

The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to be fixed under this Act.

Extent of original jurisdiction of District Judge or Subordinate Judge.

XIX.—The jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions in the Code of Civil Procedure, Section vi., to all original suits cognizable by the Civil Courts.

Extent of Munsif's jurisdiction.

XX.—The jurisdiction of a Munsif extends to all like suits in which the amount or value of the subject-matter in dispute does not exceed one thousand rupees.

Appeals from District Judge and Additional Judges.

XXI.—Appeals from the decrees and orders of District Judges and Additional Judges shall, when such appeals are allowed by law, lie to the High Court.

Appeals from Subordinate Judges and Munsifs.

XXII.—Appeals from the decrees and orders of Subordinate Judges and Munsifs shall, when such appeals are allowed by law, lie to the District Judge, except where the amount or value of the subject-matter in dispute exceeds five thousand rupees, in which case the appeal shall lie to the High Court:

Provided that the High Court may, from time to time, with the previous sanction of the Local Government, order that all appeals from the decrees and orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the order, and such appeals shall thereupon be preferred accordingly.

Power to require witnesses or parties to be sworn.

XXIII.—Every Court under this Act may require a witness or party to any suit or proceeding pending in such Court, to take such oath as is prescribed by the law for the time being in force.

Certain decisions to be according to Native law.

XXIV.—Where in any suit or proceeding it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, shall form the rule of decision, except in so far as such law has, by legislative enactment, been altered or abolished.

In cases not provided for by the former part of this section, or by any other law for the time being in force, the Court shall act according to justice, equity, and good conscience.

Judges not to try suits in which they are interested.

XXV.—No Munsif, Subordinate Judge, Additional Judge, or District Judge shall try any suit in which he is a party or personally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit.

No Subordinate Judge, Additional Judge, or District Judge shall try any appeal against a decree or order passed by himself in another capacity.

When any such suit, proceeding, or appeal comes before any such Munsif, Subordinate Judge, Additional Judge, or District Judge, he shall forthwith transmit the whole record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

The superior Court shall thereupon dispose of the case in the manner prescribed by the Code of Civil Procedure, Section vi.

Nothing in the last preceding Clause of this Section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

CHAPTER IV.

SPECIAL JURISDICTION.

Power to refer to Subordinate Judges appeals from Munsifs.

XXVI.—Every District Judge may, from time to time, subject to the orders of the High Court, refer to any Subordinate Judge under his control any appeals pending before him from the decisions of Munsifs; and such Subordinate Judge shall hear and dispose of such appeals accordingly.

The District Judge may withdraw any appeals so referred, and hear and dispose of appeals so withdrawn.

Power to transfer to Subordinate Judge or Munsif certain proceeding pending before District Judge.

XXVII.—The High Court may, from time to time, by order, authorize any District Judge to transfer to a Subordinate Judge under his control appeals from orders of Munsifs preferred under the Code of Civil Procedure, Sections xxxvi., lxxvi., lxxxv., xciv., cxiv., ccxxxi., and cclvii., or under Act No. XXIII. of 1861, Section xi.

The High Court may also, from time to time, by order, authorize any District Judge to transfer to a Subordinate Judge, or Munsif under the control of such District Judge, any of the proceedings next hereinafter mentioned, or any class of such proceedings specified in such order, and then pending, or thereafter instituted, before such District Judge.

The proceedings referred to in the second Clause of this Section are the following (that is to say),—

(1.)—Proceedings under Bengal Regulation V. of 1799 *(to limit the Interference of the Zillah and City Courts of Dewanny Adawlut in the Execution of Wills and Administration to the Estates of Persons dying intestate).*

(2.)—Proceedings under Act No. XL. of 1858 *(for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal)*, or Act No. IX. of 1861 *(to amend the law relating to Minors).*

(3.)—Claims to attached property under the Code of Civil Procedure, Section ccxlvi.

(4.)—Applications by judgment-debtors under Section cclxxiii., or Section cclxxx. of the same Code.

(5.)—Applications to file awards under Section cccxxvii. of the same Code.

(6.) Applications for permission to sue or appeal as a pauper.

(7.)—Applications for certificates under Act No. XXVII. of 1860 *(for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons).*

The District Judge may withdraw any proceedings so transferred, and may either himself dispose of them, or, with the sanction of the High Court, transfer them to any other Subordinate Judge or Munsif under his control.

Disposal of proceedings so transferred.

XXVIII.—Subject to the provisions of the last Clause of Section xxvii., all proceedings transferred under the second Clause of the same Section shall be disposed of by the Subordinate Judge or Munsif (as the case may be) according to the rules prescribed for the guidance of District Judges in like cases :

Provided that an appeal from the order of the Subordinate Judge or Munsif in such cases shall lie to the District Judge.

An appeal from his order thereon shall lie to the High Court if an appeal from the decision of the Judge in such proceedings is allowed by the law in force for the time being.

Power to invest Subordinate Judges with Small Cause jurisdiction.

XXIX.—The Local Government may invest, within such local limits as it from time to time appoints, any Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts, up to the amount of five hundred rupees, and any Munsif with similar jurisdiction up to the amount of fifty rupees; and may, whenever it thinks fit, withdraw such jurisdiction from the Subordinate Judge or Munsif so invested.

Amendment of Act XI. of 1865.

XXX.—Section fifty-one of Act No. XI. of 1865 *(to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the Ordinary Original Civil jurisdiction of the High Courts of Jurisdiction)*, shall be read as if for the words "Principal Sadr Amin," the words "Subordinate Judge" were substituted.

CHAPTER V.

MISFEASANCE.

XXXI.—Any District Judge, Additional Judge, Subordinate Judge, or Munsif may, for any misconduct, be suspended or removed by the Local Government.

Suspension or removal of District Judge or Addtional Judge.

XXXII.—The High Court may, whenever it sees urgent necessity for so doing, suspend any Subordinate Judge under its control.

Suspension of Subordinate Judge.

Whenever the High Court exercises this power, it shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order thereon as it thinks fit.

XXXIII.—The High Court may appoint a Commission for enquiring into the alleged misconduct of any Munsif.

Suspension of Munsifs by High Court.

On receiving the report of the result of any such enquiry, the High Court may, if it thinks fit, remove the Munsif from office, or suspend him, or reduce him to a lower grade.

The provisions of Act No. XXXVII. of 1850 *(for regulating enquiries into the behaviour of public servants)* shall apply to enquiries under this Section, the powers conferred by that Act on the Government being exercised by the High Court.

The High Court may also, previous to the appointment of such Commission, suspend any Munsif pending the result of the enquiry.

The High Court may, without appointing any such Commission, remove or suspend any Munsif, or reduce him to a lower grade.

XXXIV.—Any District Judge may, whenever he sees urgent necessity for so doing, suspend from office any Munsif under his control.

Suspension of Munsifs by District Judge.

Whenever a District Judge suspends from office any such Munsif, he shall forthwith send to the High Court a full report of the circumstances of the suspension, together with the evidence, if any, and the High Court shall make such order thereon as it thinks fit.

CHAPTER VI.

MINISTERIAL OFFICERS.

XXXV.—The Judges of the District Courts shall appoint the Ministerial Officers of such Courts, and, subject only to the general control of the Local

Appointment and removal of

Ministerial Officers of District Courts.

Government, the said Judges may remove or suspend such Officers, or fine them in an amount not exceeding one month's salary.

Appointment and removal of Ministerial Officers of Subordinate Judges and Munsifs.

XXXVI.—The Ministerial Officers of the Courts of Subordinate Judges and Munsifs shall be nominated and appointed by those Courts respectively, subject to the approval of the District Judge within whose jurisdiction such Courts are situate.

Power to punish such Officers.

Every such Court may, by order, remove or suspend from office, or fine in an amount not exceeding one month's salary, any of its Ministerial Officers who is guilty of any misconduct or neglect in the performance of the duties of his office. And the District Judge, subject only to the general control of the Local Government, may, on appeal or otherwise, reverse or modify every such order.

Nothing in this Section or in Section xxxv. shall exempt the offender from any penal or other consequences to which he may be liable under any other law in force for the time being.

Transfer of Ministerial Officers.

XXXVII.—The Local Government may, at the instance of the District Judge, transfer from any Court in the territories subject to such Government, to any other Court in the same territories, all or any of the Ministerial Officers of such Judge or of any Subordinate Judge or Munsif under his control.

The District Judge may transfer all or any of the Ministerial Officers of any Court under his control to any other such Court.

Recovery of fines.

XXXVIII.—Any fine imposed under this chapter shall, if the order imposing it so directs, be recovered by deduction from the offender's salary.

SCHEDULE.

PART I.—*Bengal Regulations.*

Number and year.	Title.	Extent of Repeal.
III. of 1793 ...	A Regulation for extending and defining the jurisdiction of the Courts of Dewanny Adawlut, or Courts of Judicature for the trial of civil suits in the first instance, established in the several Zillahs, and in the Cities of Patna, Dacca, and Moorshedabad.	So much as has not been repealed.
IV. of 1793 ...	A Regulation for receiving, trying, and deciding suits or complaints declared cognizable in the Zillahs, and in the Cities of Patna, Dacca, and Moorshedabad.	Section xv.
VII. of 1795 ...	A Regulation for establishing a Court of Dewanny Adawlut, or Court of Judicature for trying civil suits in the first instance, at the City of Benares, and at Mirzapore, Ghazeepore, and Jaunpore, in the Province of Benares, and for defining the jurisdiction and powers of those Courts.	So much as has not been repealed.
VIII. of 1795 ...	A Regulation for extending to the Province of Benares, with alterations and modifications, Regulation IV. of 1793, entitled "a Regulation for receiving, trying, and deciding suits for complaints declared cognizable in the Courts of Dewanny Adawlut established in the several Zillahs, and in the Cities of Patna, Dacca, and Moorshedabad;" and for exempting the Rajah of Benares and the Baboos of his family, and certain Bankers, when defendants, from giving the security required from other defendants.	Section iii.
II. of 1803 ...	A Regulation for establishing and defining the jurisdiction of the Courts of Adawlut, or Courts of Judicature, for the trial of civil suits in the first instance, in the Provinces ceded by the Nawab Vizier to the Honourable the English East India Company.	So much as has not been repealed.

Number and year.	Title.	Extent of Repeal.
III. of 1803 ...	A Regulation for receiving, trying, and deciding suits or complaints, declared cognizable in the Courts of Adawlut established in the several Zillahs in the Provinces ceded by the Nawab Vizier to the Honourable the English East India Company.	Section xvi., clause 1.
VIII. of 1805 ...	A Regulation for extending to the conquered Provinces situated within the Dooab and on the right bank of the River Jumna, and to the Territory ceded to the Honourable the English East India Company in Bundlecund by the Peishwa, such of the Laws and Regulations established for the internal government of the Provinces ceded by the Nawab Vizier to the Honourable the English East India Company, as have not been already extended to those Territories, and for revising and amending certain parts of the said Laws and Regulations.	Section vi. and so much of section vii. as extends Regulation III., 1803, section xvi., clause 1.
VII. of 1832 ...	A Regulation for modifying certain of the provisions of Regulation V., 1831, and for providing Supplementary Rules to that Enactment.	So much as has not been repealed.
VIII. of 1833 ...	A Regulation for the occasional appointment of Additional Judges of the Zillah and City Courts.	The whole.
	PART II.—*Acts.*	
IX. of 1844 ...	An Act for authorizing the institution of suits in the Courts of Principal Sudder Ameens and Sudder Ameens.	Section iii. so far as it applies to the Bengal Presidency.
L. of 1860 ..	An Act to amend the law relating to vacations in the Civil Courts within the Presidency of Fort William in Bengal.	The whole.
XVI. of 1868 ...	An Act to consolidate and amend the law relating to Principal Sudder Ameens Sudder Ameens, and Munsifs in Bengal, and for other purposes.	The whole.
II. of 1870 ...	An Act to provide for the appointment of Additional Subordinate Judges and Munsifs in the Presidency of Fort William.	The whole.

ACT VIII. OF 1871.

(Received the assent of the Governor-General on the 24th March 1871.)

Whereas it is expedient to consolidate and amend the laws relating to the registration of documents; It is hereby enacted as follows:— Preamble.

PART I.

PRELIMINARY.

I.—This Act may be called "The Indian Registration Act, 1871." Short title.

It extends to the whole of British India, except such districts or tracts of country as the Local Government may from time to time, with the previous sanction of the Governor-General in Council, exclude from its operation. Local extent.

And it shall come into force on the first day of July 1871. Commencement.

II.—On and from that day the enactments mentioned or referred to in the first schedule hereto annexed, shall be repealed to the extent specified in the third column of the same schedule. Repeal of enactments.

But all appointments, notifications, rules and orders made, and all offices established, under any of the said enactments shall be deemed to have been, respectively, made and established under this Act, except in so far as such rules and orders may be inconsistent herewith.

References made in Acts passed before the first day of July 1871, to any enactment hereby repealed, shall be read as if made to the corresponding Section of this Act.

And nothing herein contained affects Act No. XX. of 1866, so far as relates to the procedure upon any agreement recorded under Section lii. of that Act at any time before that day, or the procedure provided by that Act for the registration and deposit of authorities to adopt executed before the first day of January 1872.

And so far as regards suits instituted before the first day of April 1873, nothing herein contained affects Act No. XIV. of 1859, Section i., Clause 10, as amended by Act No. XX. of 1866, Section xxvii.

III.—In this Act, unless there be something repugnant in the subject or context— Interpretation-clause.

"Lease."

"Lease" includes a counterpart, a kabúliyát, an undertaking to cultivate or occupy, and an agreement to lease :

"Signature." "Signed."

"Signature" and "signed" include and apply to the affixing of a mark :

"Immovable property."

"Immovable property" includes land, buildings, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass :

"Movable property."

"Movable property" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property :

"Book."

"Book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book :

"Endorsement." "Endorsed."

"Endorsement" and "endorsed" include and apply to an entry in writing by a Registering Officer on a rider or covering slip to any document tendered for registration under this Act :

"Minor."

"Minor" means a person who, according to the personal law to which he is subject, has not attained majority :

"Representative."

"Representative" includes the guardian of a minor and the Committee or other legal curator of a lunatic or idiot :

"Addition."

"Addition" means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of a Native, his caste (if any) and his father's name, or where he is usually described as the son of his mother, then his mother's name.

"District Court."

"District Court" includes the High Court in its ordinary original civil jurisdiction :

"District." "Sub-District."

"District" and "Sub-District" respectively mean a District and Sub-District formed under this Act.

PART II.

OF THE REGISTRATION ESTABLISHMENT.

Inspector General.

IV.—The Local Government shall appoint an officer to be the Inspector General of Registration forthe territories subject to such Government,

or may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector

General shall be exercised and performed by such officer or officers and within such local limits as the Local Government from time to time appoints in this behalf.

The Government of Bombay in Council may also, with the previous consent of the Governor-General in Council, appoint an officer to be Branch Inspector General of Sindh, who shall have all the powers of the Inspector General under this Act other than the power to frame rules hereinafter conferred.

Branch Inspector General of Sindh.

Any Inspector General or the Branch Inspector General of Sindh may hold simultaneously any other office under Government.

V.—For the purposes of this Act, the Local Government shall form Districts and Sub-Districts, and shall prescribe and may from time to time alter the limits of such Districts and Sub-Districts.

Districts and Sub-Districts.

The Districts and Sub-Districts formed under this Section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official *Gazette*.

Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

VI.—The Local Government may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several Districts, and to be Sub-Registrars of the several Sub-Districts, formed as aforesaid, respectively.

Registrars and Sub Registrars.

VII.—The Local Government shall establish in every District an office to be styled the Office of the Registrar and in every Sub-District an office to be styled the Office of the Sub-Registrar,

Offices of Registrar and Sub-Registrar.

and may amalgamate with any Office of a Registrar any Office of a Sub-Registrar.

VIII.—The Local Government may also appoint officers to be called Inspectors of Registration Offices, and may from time to time prescribe the duties of such officers. Every such Inspector shall be subordinate to the Inspector General.

Inspectors of Registration Offices.

IX.—Every Military Cantonment where there is a Cantonment Magistrate may (if the Local Government so directs) be, for the purposes of this Act, a Sub-District or a District, and such Magistrate shall be the Sub-Registrar or the Registrar, of such Sub-District or District, as the case may be.

Military Cantonments may be declared Sub-Districts.

Whenever the Governor-General in Council declares any Military Cantonment beyond the limits of British India to be a Sub District or a District

for the purposes of this Act, he shall also declare, in the case of a Sub-District, what authorities shall be Registrar of the District and Inspector General, and in the case of a District, what authority shall be Inspector General, with reference to such Cantonment and the Sub-Registrar or Registrar thereof.

Absence of a Registrar from his District or vacancy in his office.

X.—Whenever any Registrar other than the Registrar of a District including a Presidency Town, is absent otherwise than on duty in his District, or when his office is temporarily vacant,

any person whom the Inspector General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's Office is situate,

shall be the Registrar during such absence or until the Local Government fills up the vacancy.

Whenever the Registrar of a District including a Presidency Town, is absent otherwise than on duty in his District, or when his office is temporarily vacant,

any person whom the Inspector General appoints in this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

Absence of Registrar on duty in his District.

XI.—Whenever any Registrar is absent from his office on duty in his District, he may appoint any Sub-Registrar or other person in his District to perform, during such absence, all the duties of a Registrar, except those mentioned in Sections lxviii. and lxxii.

Absence of Sub Registrar or vacancy in his office.

XII.—Whenever any Sub-Registrar is absent, or when his office is temporarily vacant,

any person whom the Registrar of the District appoints in this behalf shall be Sub-Registrar during such absence, or until the Local Government fills up the vacancy.

Appointments under section x., xi. or xii. to be reported to Local Government.

XIII.—All appointments made under Section x., Section xi., or Section xii. shall be reported to the Local Government by the Inspector General. Such report shall be either special or general, as the Local Government directs.

Suspension, removal and dismissal of Registering Officers.

The Local Government may suspend, remove or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

Remuneration

XIV.—Subject to the approval of the Governor-General in Council, the

Local Government may assign such salaries as such Government from time to time deems proper to the Registering Officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries. and establishments of Registering Officers.

The Local Government may allow proper establishments for the several Offices under this Act.

XV.—The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs :—"The seal of the Registrar *(or* of the Sub-Registrar) of ". Seals of Registering Officers.

XVI.—The Local Government shall provide for the office of every Registering Officer the books necessary for the purposes of this Act. Register-Books.

The books so provided shall contain the forms from time to time prescribed by the Inspector General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued. Forms.

The Local Government shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such District. Fire-proof boxes.

PART III.

OF REGISTRABLE DOCUMENTS.

XVII.—The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a District in which, and if they have been executed on or after the date on which, Act No. XVI. of 1864, or Act No. XX. of 1866, or this Act came or comes into force (that is to say),— Documents of which the registration is compulsory.

(1) Instruments of gift of immovable property :

(2) Other instruments (not being wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property :

(3) Instruments (not being wills) which acknowledge the receipt or pay-

ment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(4) Leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent.

Provided that the Local Government may, by order published in the official *Gazette*, exempt from the operation of the former part of this Section any leases executed in any District, or part of a District, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

Exception of composition deeds; and of transfers of shares and debentures in Land Companies.

Nothing in clauses (2) and (3) of this Section applies

(a) to any composition deed,

(b) to any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property, or

(c) to any endorsement upon or transfer of any debenture issued by any such Company.

Authorities to adopt a son, executed after the first day of January 1872 and not confered by a will, shall also be registered.

Documents of which the registration is optional.

XVIII.—Any of the documents next hereinafter mentioned may be registered under this Act (that is to say),—

(1) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees to or in immovable property:

(2) Instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest:

(3) Leases of immovable property for any term not exceeding one year, and leases exempted under Section xvii.:

(4) Awards relating to immovable property:

(5) Instruments which purport or operate to create, declare, assign, limit or extinguish any right, title, or interest to or in movable property:

(6) Wills:

(7) Acknowledgments, Agreements, Appointments, Articles of Partnership, Assignments, Awards, Bills of Exchange, Bills of Sale, Bonds, Composition-deeds, Conditions of Sale, Contracts, certified copies of decrees and orders of Courts, Covenants, Grants, Instruments of Dissolution of Partnership, Instruments of Partition, Powers of Attorney, Promissory Notes, Releases, Settlements, Writings of Divorcement, and all other documents not hereinbefore mentioned.

Documents in language not understood by Registering Officer.

XIX.—If any document duly presented for registration be in a language which the Registering Officer does not understand, and which is not commonly used in the District, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the District and also by a true copy.

Documents containing interlineations, blanks, erasures or alterations.

XX.—The Registering Officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration. If he register such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

Description of parcels.

XXI.—*(a)* No document not testamentary relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(b) Houses in towns shall be described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

Documents containing maps or plans.

(c) No document not testamentary containing a map or plan of any property comprise therein shall be accepted for registration unless it be accompanied by a true copy of the map or plan, or, in case such property is situate in several Districts, by such number of true copies of the map or plan as are equal to the number of such Districts.

Failure to comply with rules as to description of houses and land.

XXII.—Failure to comply with the provisions contained in Section xxi., clause *(b)* shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify such property.

PART IV.

OF THE TIME OF PRESENTATION.

Time for presenting documents of which the registration is compulsory.

XXIII.—Subject to the provisions contained in Sections xxiv., xxv. and xxvi., no document required by Section xvii. to be registered, and no document mentioned in Section xviii., other than a will, shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

or, in the case of a copy of a decree or order, within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final:

Provided that, where there are several persons executing a document a different times, such document may be presented for registration and re-registration within four months from the date of each execution.

Provision where delay in presentation is unavoidable.

XXIV.—If owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration.

Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

Documents executed out of British India.

XXV.—When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registering Officer, if satisfied,

(1) that the instrument was so executed, and

(2) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration fee, accept such document for registration.

Provision where office is closed on last day of period for presentation.

XXVI.—Whenever a registration-office is closed on the last day of any period hereinbefore provided for the presentation of any document, such last day shall, for the purposes of this Act, be deemed to be the day on which the office re-opens.

XXVII.—A will may at any time be presented for registration or deposited in manner hereinafter provided.

Wills may be presented or deposited at any time.

PART V.

OF THE PLACE OF REGISTRATION.

XXVIII.—Save as in this part otherwise provided, every document mentioned in Section xvii., clauses (1), (2), (3) and (4), and Section xviii., clauses (1), (2), (3) and (4), shall be presented for registration in the office of a Sub-Registrar within whose Sub-District the whole or some portion of the property to which such document relates is situate.

Place for registering documents relating to immovables.

XXIX.—Every document, other than a document referred to in Section xxviii., and copy of a decree or order, may be presented for registration, either in the office of the Sub-Registrar in whose Sub-District the document was executed, or in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

Place for registering other documents.

A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose Sub-District the original decree or order was made, or, where the decree or order does not affect immovable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree desire the copy to be registered.

XXX.—*(a)* Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

Registration by Registrar.

(b) The Registrar of a District including a Presidency Town may receive and register any document referred to in Section xxviii. without regard to the situation in any part of British India of the property to which the document relates.

Registration by Registrar at Presidency Town.

XXXI.—In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer whose duty it is to register the same.

Registration or acceptance for deposit at private residence.

But such officer may on special cause being shown attend at the residence of any person intending to register any document which would ordinarily be registered at such office, or of any person desiring to deposit a will, and register or accept for registration or deposit such document or will.

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

Persons to present documents for registration.

XXXII.—Except in the case mentioned in Section xxxi., every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper Registration Office,

by some person executing or claiming under the same, or, in the case of a copy of decree or order, claiming under the decree or order,

or by the representative or assign of such person,

or by the agent of such person, representative or assign, duly authorized by power of attorney executed and authenticated in manner hereinafter mentioned.

Powers of attorney recognizable for purposes of section xxxii.

XXXIII.—For the purposes of Section xxxii., the powers of attorney next hereinafter mentioned shall alone be recognized (that is to say),—

(a) if the principal at the time of executing the power of attorney resides in any part of British India, in which this Act is for the time being in force a power of attorney executed before and authenticated by the Registrar or Sub-Registrar within whose District or Sub-District the principal resides :

(b) if the principal at the time aforesaid resides in any other part of British India, a power of attorney executed before and authenticated by any Magistrate :

(c) if the principal at the time aforesaid does not reside in British India a power of attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India :

Proviso as to persons infirm, or in jail, or exempt from appearing in Court.

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power of attorney as is mentioned in clauses *(a)* and *(b)* of this Section :—

persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend ;

persons who are in jail under civil or criminal process ; and

persons exempt by law from personal appearance in Court.

In every such case the Registrar or Sub-Registrar or Judge (as the

case may be), if satisfied that the power of attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Judge may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Any power of attorney mentioned in this Section may be proved by the production of it without further proof, when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

Enquiry before registration by the registering officer.

XXXIV.—Subject to the provisions contained in this Part and in Sections xli., xliii., xlv., lxix., lxxvi. and lxxxvi., no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the Registering Officer within the time allowed for presentation:

Provided that if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases when the delay in appearing does not exceed four months may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, the document may be registered.

Such appearances may be simultaneous or at different times.

The Registering Officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed,

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document, and

(c) in the case of any persons appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

Procedure on admission of execution.

XXXV.—If all the persons executing the document appear personally before the Registering Officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document;

or, in the case of any person appearing by a representative, assign or agent, if such representative, assign or agent admits the execution;

or, if the person executing the document is dead, and his representative or assign appears before the Registering Officer, and admits the execution,

the Registering Officer shall register the document as directed in Sections lviii. to lxi. inclusive.

The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

Procedure on denial of execution, &c.

If all or any of the persons by whom the document purports to be executed deny its execution,

or if any such person appears to be a minor, an idiot, or a lunatic,

or if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the Registering Officer shall refuse to register the document.

Nothing in Section xxxiv., or the former part of this Section, applies to copies of decrees or orders.

PART VII.

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

Procedure where appearance of executant or witness is desired.

XXXVI.—If any person presenting any document for registration desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the Registering Officer may, in his discretion, call upon such officer or Court as the Local Government from time to time directs in this behalf to issue a summons requiring him to appear at the registration office, either in person or by duly authorised agent, as in the summons may be mentioned and at a time named therein.

Officer or Court to issue and cause service of summons.

XXXVII.—The Officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

Persons exempt from apperance at registration office.

XXXVIII.—A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration office,

a person in jail under civil or criminal process,

and persons exempt by law from personal appearance in Court, and who

would but for the provision next hereinafter contained be required to appear in person at the registration office,.

shall not be required so to appear.

In every such case, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

XXXIX.—The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses, and for their remuneration in suits before civil Courts shall, save as aforesaid and *mutatis mutandis*, apply to any summons or commission, issued, and any person summoned to appear under the provisions of this Act.

Laws as to summonses, commissions and witnesses in this Act.

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

XL.—The testator or any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration,

Persons entitled to present wills and authorities to adopt.

and the donor or donee of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub Registrar for registration.

XLI.—A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

Registration of wills and authorities to adopt.

A will or authority to adopt presented for registration by any other person entitled to present it, shall be registered if the Registering Officer is satisfied,

(1) that the will or authority was executed by the testator or donor, as the case may be,

(2) that the testator or donor is dead, and

(3) that the person presenting the will or authority is, under section xl., entitled to present the same.

PART IX.

OF THE DEPOSIT OF WILLS.

Deposit of wills.

XLII.—Any testator may either personally or by duly authorized agent deposit with any Registrar the will in a sealed cover superscribed with the name of the depositor and the nature of the document.

Procedure on deposit of wills.

XLIII.—On receiving such sealed cover, the Registrar, if satisfied that the depositor is the testator, or his duly authorized agent, shall transcribe in his Register Book No. 5 the superscription on such sealed cover, and note in the register and on the sealed cover the year, month, day and hour of such presentation and receipt, together with the name of the depositor, and the name of each of the persons testifying to the identity of such depositor, and the inscription so far as it is legible on the seal of the cover.

The Registrar shall then place and retain the sealed cover in his fire-proof box.

Withdrawal of sealed cover deposited under section xlii.

XLIV.—If the depositor of any such sealed cover wishes to withdraw it, he may apply to the Registrar with whom it has been so deposited for the delivery of the cover; and the Registrar, if satisfied as to the identity of the depositor with the applicant, shall deliver the cover accordingly.

Proceedings on death of depositor.

XLV.—If, on the death of the depositor of a sealed cover under Section xlii., application be made to the Registrar with whom it has been deposited to open the same, the Registrar, if satisfied that the depositor is dead, shall, in the applicant's presence, open the cover, and copy, at the applicant's expense, the contents thereof in his Book No. 3.

Re-deposit.

When such copy has been made, the Registrar shall re-deposit the original will.

Saving of Act X. of 1865, section cclix.

XLVI.—Nothing hereinbefore contained shall affect the provisions of the Indian Succession Act, Section cclix., or the power of any Court by order to compel the production of any will. But whenever any such order is made, the Registrar shall copy the will in his Book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

PART X.

OF THE EFFECTS OF REGISTRATION AND NONREGISTRATION.

Time from which registered document operates.

XLVII.—A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

XLVII.—All documents, not testamentary, duly registered under this Act, and relating to any property whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

Registered documents relating to property when to take effect against oral agreements.

XLIX.—No document required by section xvii. to be registered,

shall affect any immovable property comprised therein,

or confer any power to adopt,

or be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered in accordance with the provisions of this Act.

Effect of non-registration of documents required to be registered.

L.—Every document of the kinds mentioned in clauses (1) and (2) of section xviii., shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Registered documents relating to immovables, of which the registration is optional, to take effect against unregistered documents.

Explanation.—In cases where Act No. XVI. of 1864 or Act No. XX. of 1866 was in force in the place and at the time in and at which such unregistered document was executed, "unregistered" means not registered according to such Act, and, where the document is executed after the first day of July 1871, not registered under this Act.

PART XI.

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(A.) As to the Register Books and Indexes.

LI.—The following Books shall be kept in the several offices hereinafter named (that is to say),—

Register Books to be kept in the several offices.

In all Registration Offices—

Book 1, "Register of documents relating to immovable property;"

Book 2, "Record of reasons for refusal to register;"

Book 3, "Register of wills and authorities to adopt;" and

Book 4, "Miscellaneous Register."

In the Offices of Registrars—

Book 5, "Register of deposits of wills."

In Book 1 shall be entered or filed all documents or memoranda registered under the first four clauses of Sections xvii. and xviii. and all other documents mentioned in Section xviii., clause (7), which relate to immovable property.

In Book 4 shall be entered all documents registered under clauses (5) and (7) of Section xviii., and not entered in Book 1.

Nothing in the former part of this Section shall be deemed to require more than one set of books where the Office of a Registrar has been amalgamated with the Office of a Sub-Registrar.

Endorsements on document presented.

Receipt for document.

Documents admitted to registration to be copied.

LII.—The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it; a receipt for such document shall be given by the registering Officer to the person presenting the same; and, subject to the provisions contained in Section lxii., every document admitted to registration shall without unnecessary delay be copied in the Book appropriated therefor according to the order of its admission.

And all such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.

Entries to be numbered consecutively.

LIII.—All entries in each Book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

Current indexes and entries therein.

LIV.—In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

Indexes to be made by registering officers.

LV.—Two such indexes shall be made in all registration offices, and shall be named, respectively, Index No. I. and Index No. II.

Index No. I. shall contain the names and additions of all persons executing and of all persons claiming under every document copied into or memorandum filed in Book No. 1 or Book No. 3.

Index No. II. shall contain such particulars mentioned in Section xxi., relating to every such document and memorandum as the Inspector General from time to time directs in that behalf.

A third index to be called Index No. III. shall contain the names and additions of all persons executing and of all persons claiming under every document copied into Book No. 4.

Indexes Nos. I., II. and III. shall contain such other particulars, and shall be prepared in such form, as the Inspector General from time to time directs.

Extra particulars in indexes.

LVI.—Every Sub-Registrar shall send to the Registrar to whom he is subordinate, at such intervals as the Inspector General from time to time directs, a copy of all entries made by such Sub-Registrar during the last of such intervals in Indexes Nos. I. and II.

Copy of entries in Indexes Nos. I. and II. to be sent by Sub-Registrar to Registrar.

Every Registrar receiving such copy shall file it in his office.

Such copy to be filed in Registrar's office.

LVII.—Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and subject to the provisions of Section lxii., copies of entries in such books shall be given to all persons applying for such copies.

Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.

Subject to the same provisions, copies of entries in Books Nos. 3 and 4 and in the indexes relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer; but the requisite search for such entries shall be made only by the registering officer.

Such copies shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B.)—As to the procedure on admitting to registration.

LVIII.—On every document admitted to registration, other than a copy of a decree or order, there shall be endorsed from time to time the following particulars (that is to say),—

Particulars to be endorsed on documents admitted to registration.

(1) the signature and addition of every person admitting the execution of the document; and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent

(2) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(3) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

Such endorsements to be dated and signed by registering officer.

LIX.—The registering officer shall affix the date and his signature to all endorsements made under the last preceding section, relating to the same document and made in his presence on the same day.

Certificate showing that document has been registered, and number and page of Book in which it has been copied.

LX.—After such of the provisions of sections xxxiv., xxxv., lviii., and lix. as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the Book in which the document has been copied.

Such certificate shall be signed, sealed and dated by the registering officer and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section lix. have occurred as therein mentioned.

Endorsements and certificate to be copied.

LXI.—The endorsements and certificate referred to and mentioned in sections lix. and lx. shall thereupon be copied into the margin of the Register Book, and the copy of the map or plan (if any) mentioned in section xxi. shall be filled in Book No. 1.

Document to be returned.

The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section lii.

Procedure on presentation of a document in a language unknown to the registering officer.

LXII.—When a document is presented for registration under section xix., the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section xix., shall be filed in the registration office.

The endorsements and certificate respectively mentioned in sections lix. and lx. shall be made on the original, and for the purpose of making the copies and memoranda required by sections lvii., lxiv., lxv. and lxvi., the translation shall be treated as if it were the original.

Power to administer oaths.

LXIII.—Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

Record of substance of statements.

He may also at his discretion record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him

in a language with which he is acquainted, and if he admits the correctness of such note, it shall be signed by the registering officer.

Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C.)—Special duties of Sub-Registrar.

Procedure on Sub-Registrar's registration of document relating to immovable property situate in several Sub-Districts.

LXIV.—Every Sub-Registrar on registering a document relating to immovable property not wholly situate in his own Sub-District, shall make a memorandum thereof and of the endorsement and certificate thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose Sub-District any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

Procedure on Sub-Registrar's registration of document relating to immovable property situate in several Districts.

LXV.—Every Sub-Registrar on registering a document relating to immovable property situate in more Districts than one, shall also forward a copy thereof and of the endorsement and certificate thereon, together with a copy of the map or plan (if any) mentioned in section xxi., to the Registrar of every District in which any part of such property is situate other than the District in which his own Sub-District is situate.

The Registrar on receiving the same shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose Sub-District any part of such property is situate; and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

(D.)—Special duties of Registrar.

Procedure on registering documents relating to immovables.

LXVI.—On registering any document not testamentary relating to immovable property the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose Sub-District any part of the property is situate.

He shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section xxi., to every other Registrar in whose District any part of such property is situate.

Such Registrar, on receiving any such copy, shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose Sub-District any part of the property is situate.

Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

Procedure on registration under section xxx., clause *(b)*.

LXVII.—On any document being registered under section xxx., clause *(b)*, a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose District any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in the first clause of Section lxvi.

(E.)—Of the controlling powers of Registrars and Inspectors General.

Registrar to superintend and control Sub-Registrars.

LXVIII.—Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose District the office of such Sub-Registrar is situate.

Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him, or in respect of the rectification of any error regarding the Book or the office in which any document shall have been registered.

Inspector General to superintend registration offices. His power to frame rules.

LXIX.—The Inspector General shall exercise a general superintendence over all the registration offices in the territories under the Local Government, and shall have power from time to time to frame rules consistent with this Act—

providing for the safe custody of books, papers and documents, and also for the destruction of such books, papers and documents as need no longer be kept;

declaring what languages shall be deemed to be commonly used in each District;

declaring what territorial divisions shall be recognized under section xxi.;

regulating the amount of fines imposed under section xxiv.;

regulating the exercise of the discretion reposed in the Registering Officer by section lxiii.

regulating the form in which Registering Officers are to make memoranda of documents;

regulating the authentication by Registrars and Sub-Registrars of the books kept in their respectve offices under section li.;

declaring the particulars to be contained in Indexes Nos. I., II. and III., respectively;

declaring the holidays that shall be observed in the registration offices;

and, generally, regulating the proceedings of the Registrars and Sub-Registrars.

The rules so framed shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official *Gazette*, and shall then have the same force as if they were inserted in this Act.

His power to remit fines.

LXX.—The Inspector General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under Section xxiv. or Section xxxiv. and the amount of the proper registration fee.

PART XII.

OF REFUSAL TO REGISTER.

Reasons for refusal to register to be recorded by Registrar or Sub-Registrar.

LXXI.—Every Registering Officer refusing to register a document,

except (1) where the property to which the document relates is not situate within his District or Sub-District, or (2) where the Registering Officer being a Registrar declines to accept the document on the ground that it ought to be registered in the office of a Sub-Registrar,

shall make an order of refusal and record his reasons for such order in his Book No 2, and endorse the words "registration refused" on the document; and on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

No Registering Officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

Registrar may alter or revise orders of Sub-Registrar refusing registration.

LXXII.—An appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate if presented to such Registrar within thirty days from the date of the order, and the Registrar may reverse or alter such order:

Any Registrar refusing to direct the registration of any document shall make an order of refusal and record the reasons for such order in his Book No. 2, and on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

Procedure where Registrar refuses to register or direct registration of documents falling under section xvii. or section xviii. clauses 1, 2, 3 and 4.

LXXIII.—If a Registrar makes under Section lxxi. or Section lxxii. an order of refusal to register or to direct the registration of any document,

or if he has made a like order under Section lxxxii. or Section lxxxiii of Act No. XX. of 1866,

or if the Sub-Registrar has refused to register the document on the ground that the person, or one of the persons, by whom the document purports to have been executed has denied the execution,

or if the Registrar has himself as Sub-Registrar made an order of refusal under Section lxxi,

any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply by petition to the District Court, in order to establish his right to have the document registered.

Petition.

LXXIV.—The petition shall be in the form contained in the second Schedule hereto annexed or as near thereto as circumstances permit, and shall be accompanied by copies of the reasons recorded under Sections lxxi. and lxxii.; the statements in the petition shall be verified by the petitioner in manner required by law for the verification of plaints; and the petitioner may be amended by permission of the Court.

To be verified.

Court to fix day for hearing petition, and copy thereof to be served.

LXXV.—The Court shall fix a day for the hearing of the petition not less than two days after the service next hereinafter mentioned, and shall direct a copy of the petition, with a notice at the foot thereof of the day so fixed, to be served on the Registering Officer and on such other persons (if any) as the Court thinks fit; and the provisions of the Code of Civil Procedure as to the service and endorsement of summonses shall apply, *mutatis mutandis*, to copies of petitions under this Section.

Court may order document to be registered.

LXXVI.—The Court may summon and enforce the attendance of witnesses and compel them to give evidence,

and on the day so fixed as aforesaid or on any day to which the hearing of the petition may be adjourned, shall enquire—

(a) whether the document has been executed, and

(b) whether the requirements of the law for the time being in force have been complied with on the part of the petitioner so as to entitle the document to registration.

If it finds that the document has been executed and that the said requirements have been complied with, the Court shall order the document to be registered,

and if the document be duly presented for registration within thirty days after the making of such order, the Registering Officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in Sections lviii., lix. and lx.

Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Provision for case in which the Judge is the Registering Officer.

Provided that when the officer presiding over the District Court has himself as Registering Officer made any order complained of under this Section, the petition shall, within sixty days after the making of such order, be presented to the High Court, and the provisions contained in the former part of this Section shall, *mutatis mutandis*, apply to such petition and the order (if any) thereon.

The District Court or the High Court, as the case may be, may direct by whom the whole or any part of the costs of any proceedings before it under this part shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.

No appeal lies from any order made under this Section.

PART XIII.

OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES.

Fees to be fixed by Local Government.

LXXVII.—Subject to the approval of the Governor-General in Council, the Local Government shall prepare a table of fees payable—

for the registration of documents:

for searching the registers:

for making or granting copies of reasons, entries or documents, before, on or after registration;

And of extra or aditional fees payable—

for every registration under Section xxx. :

for the issue of commissions :

for filing translations :

for attending at private residences :

and for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

Alteration of fees.

The Local Government may from time to time, subject to the like approval, alter such table.

Publication of fees.

A table of the fees so payable shall be published in the official *Gazette*, and a copy thereof in English and the Vernacular language of the District shall be exposed to public view in every registration office.

Fees payable on presentation.

LXXVIII.—All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

PART XIV.

PENALTIES.

Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.

LXXIX.—Every Registering Officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under the provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for certain other offences.

LXXX.—Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both :—

Making false statements before Registering Officer.

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act,

(b) intentionally delivers to a Registering Officer in any proceeding under Section xix. or Section xxi. a false copy or translation of a document, or a false copy of a map or plan, Delivering false copy or translation.

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act, False personation.

(d) abets within the meaning of the Indian Penal Code anything made punishable by this Act. Abetment of offences under this Act.

LXXXI.—A prosecution for any offence under this Act coming to the knowledge of a Registering Officer in his official capacity may be instituted by or with the permission of the Inspector General, the Branch Inspector General of Sindh, the Registrar or the Sub-Registrar, in whose territories, District or Sub-District, as the case may be, the offence has been committed. Registering Officer may institute prosecutions.

Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a subordinate Magistrate of the first class :

Provided that in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

All fines imposed under this Act may be recovered, if for offences committed outside the limits of the Presidency Towns, in the manner prescribed by the Code of Criminal Procedure and if for offences committed within those limits, in the manner prescribed by any Act regulating the police of such towns for the time being in force.

LXXXII.—Every Registering Officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code. Registering Officers to be deemed public servants.

Every person shall be legally bound to furnish information to such Registering Officer when required by him to do so. And in Section ccxxviii. of the same Code, the words "judicial proceeding" shall include any proceeding under this Act.

PART XV.

MISCELLANEOUS.

LXXXIII.—Documents (other than wills) remaining unclaimed in any registration office, for a period exceeding two years, may be destroyed. Destruction of unclaimed documents.

Registering Officer not to be liable for anything *bonâ fide* done or refused in his official capacity.

LXXXIV.—No Registering Officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

Nothing done by Registering Officer to be invalidated by defect in his appointment or procedure.

LXXXV.—Nothing done in good faith pursuant to this Act, or any Act hereby repealed, by any Registering Officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

Registration of documents executed by Government officers or certain public functionaries.

LXXXVI.—Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator General of Bengal, Madras or Bombay, or for any Official Trustee, or for the Sheriff, Receiver or Registrar of a High Court, to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in Section lviii.

But when any instrument is so executed, the Registering Officer to whom such instrument is presented for registration may, if he think fit, refer to any Secretary to Government or to such officer of Goverment, Administrator General, Official Trustee, Sheriff, Receiver or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof shall register the instrument.

EXEMPTIONS FROM ACT.

Exemption of certain documents executed by or in favour of Government.

LXXXVII.—Nothing contained in this Act or any Act hereby repealed shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps :—

(a.)—Documents issued, received, or attested by any officer engaged in making a settlement or revision of settlement of land revenue, and which form part of the records of such settlement.

(b.)—Documents and maps issued, received, or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey.

(c.)—Documents which, under any law for the time being in force, are filed periodically in any revenue office by patwáris or other officers charged with the preparation of village records.

(d.)—Sanads, inam title-deeds, and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land.

But all such documents and maps shall, for the purposes of Sections xlviii. and xlix., be deemed to have been and to be registered in accordance with the provisions of this Act.

Inspection and copies of such documents.

LXXXVIII.—Subject to such rules and the previous payment of such fees as the Local Government from time to time prescribes in this behalf, all documents and maps mentioned in Section lxxxvii, clauses *(a)*, *(b)* and *(c)*, and all registers of the documents mentioned in clause *(d)*, shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

Recognition in Oudh and Burmah for three months of powers of attorney not duly executed.

LXXXIX.—From the first of July to the first of October 1871, in the territories respectively administered by the Chief Commissioners of Oudh and British Burmah, a power of attorney not duly executed according to the provisions of Section xxxiii. shall, notwithstanding anything therein contained, be deemed to have been duly executed under the provisions of the same Section, if the Registering Officer is satisfied that it has been executed in good faith, and if a power of attorney attested under the provisions of this Act cannot be obtained within the time during which the document sought to be registered can, under such provisions, be accepted for registration.

Burmese registration rules confirmed.

XC.—All rules relating to registration heretofore enforced in British Burmah shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

FIRST SCHEDULE.

(See Section 2.)

Number and year.	Title.	Extent of repeal.
XXII. of 1864 ...	An Act to make provision for the Administration of Military Cantonments.	Sections x. and xlv.
XX. of 1866 ...	An Act to provide for the Registration of Assurances.	The whole.
XXVII. of 1868 ...	An Act to exempt certain Instruments from the Indian Registration Act, 1866.	The whole.
VII. of 1870 ...	The Court Fees' Act.	In Schedule I. the number and words following: "3 petition under the Indian Registration Act, Section liii."
	All Rules relating to the registration of documents and having the force of law in Oudh.	The whole.
	All Rules relating to the regis- of documents and having the force of law in any part of British Burmah.	The whole.

SECOND SCHEDULE.

Form of petition under Section lxxiii.

Stamp eight annas

To the Judge of the District Court [*or* To the Deputy Commissioner] of

The day of 18 .

The petition of A. B. of

Sheweth—

1. That by an instrument dated the day of and made between C. D. of the one part and your petitioner of the other part, certain lands were conveyed to your petitioner absolutely.

2. That such instrument was executed by the said C. D. on the day of 18 .

3. That the property to which such instrument relates is situate in the Sub-District of the Sub-Registrar of and in the District of

4. That on the day of your petitioner presented the said instrument for registration under "The Indian Registration Act, 1871," in the office of the said Sub Registrar.

5. That the said Sub-Registrar thereupon made an order of refusal, dated the day of 18 , to register the said instrument and gave your petitioner a copy, which is filed herewith, of the reasons for such order.

6. That your petitioner on the day of appealed to the Registrar of against such order.

7. That the said Registrar thereupon made an order of refusal, dated the day of to direct the registration of the said instrument and gave your petitioner a copy, which is filed herewith, of the reasons for such order.

8. That the reasons referred to in paragraphs 5 and 7 of this petition are, as your petitioner submits, insufficient.

Your petitioner therefore prays that your Honour will order the said Sub-Registrar to register the said instrument.

A. B.

Another Form.

Stamp eight annas.

To the Judge of the District Court [*or* To the Deputy Commissioner] of

The day of 18

The petition of A. B. of.

Sheweth—

1. That by an instrument dated the day of and made between C. D. of the one part and your petitioner of the other part, certain lands were conveyed to your petitioner by way of mortgage to secure the sum of one thousand rupees.

2. That such instrument was executed by the said C. D. on the day of 18

3. That the property to which such instrument relates is situate in the Sub-District of the Sub-Registrar of and in the District of

4. That on the day of your petitioner presented the said instrument for registration under the Indian Registration Act, 1871 in the office of the said Sub-Registrar, and the said C. D. appeared personally before the said Sub-Registrar and falsely denied the execution of the said instrument.

5. That the said Sub-Registrar thereupon made an order of refusal dated the day of 18 to register the said instrument and gave your petitioner a copy, which is filed herewith, of the reasons for such order.

6. That your petitioner has complied with the requirements of the said Act so far as it has been possible for him to do so.

Your petitioner therefore prays that your Honour will order the said Sub-Registrar to register the said instrument.

A. B.

Form of Verification.

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) A. B.

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WHITLEY STOKES,

Secretary to the Government of India.

ACT IX. OF 1871.

THE INDIAN LIMITATION ACT.

(Received the assent of the Governor General on the 24th March 1871.)

Preamble.

Whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; And whereas it is also expedient to provide rules for acquiring ownership by possession; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

I.—This Act may be called 'The Indian Limitation Act, 1871:'

Extent of Act.

It extends to the whole of British India; but nothing contained in Sections ii. and iii. or in Parts II. and III. applies—

(a) to suits instituted before the first day of April 1873,

(b) to suits under the Indian Divorce Act,

(c) to suits under Madras Regulation VI. of 1831.

Commencement.

This Act shall come into force on the first day of July 1871.

Repeal of enactments.

II.—On and from that day the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the same schedule.

Interpretation-clause.

III.—In this Act, unless there be something repugnant in the subject or context—

'minor' means a person who has not completed his age of eighteen years:

'plaintiff' includes also any person through whom a plaintiff claims:

'nuisance' means anything done to the hurt or annoyance of another's immovable property and not amounting to a trespass:

'bill of exchange' includes also a hundi:

'trustee' does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title:

'registered' means duly registered under the law for the registration of documents in force at the time and place of executing the document referred to in the context:

'foreign country' means any country other than British India;

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention.

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

Dismissal of suits, &c., instituted, &c., after period of limitation.

IV.—Subject to the provisions contained in Sections v. to xxvi. (inclusive), every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted in ordinary cases when the plaint is presented to the proper officer: in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(a)—A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The defendant appeals. The Appellate Court must dismiss the suit.

(b.)—An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

Proviso where Court is closed when period expires.

V. *a.*—If the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens:

Proviso as to appeals and applications for review.

b.—Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period;

Different periods of limitation prescribed by local laws.

VI.—When, by any law not mentioned in the schedule hereto annexed and now or hereafter to be in force in any part of British India, a period of limitation differing from that prescribed by this Act is specially prescribed for any suits, appeals or applications, nothing herein contained shall effect such law.

Appeals from decrees of High Courts on original side.

And nothing herein contained shall affect the periods of limitation prescribed for appeals from, or applications to review, any decree, order or judgment of a High Court in the exercise of its original jurisdiction.

Legal Disability.

Legal disability.

VII.—If a person entitled to sue be, at the time the right to sue accrued, a minor, or insane, or an idot,

he may institute the suit within the same period after the disability has ceased, or (when he is at the time of the accrual affected by two disabilities) after both disabilities have ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

When his disability continues up to his death, his representative in interest may institute the suit within the same period after the death as would otherwise have been allowed from the time prescribed therefor in the third column of the same schedule.

Nothing in this Section shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby the period within which the suit must be brought.

Illustrations.

(a.)—The right to sue for the hire of a boat accrues to A during his minority. He comes of age four years after the accrual of the right. He may institute his suit at any time within three years from the date of his coming of age.

(b.)—A, to whom a right to sue for a legacy has accrued during his minority, attains full age eleven years after such right accrued. A has, under the ordinary law, only one year remaining within which to sue. But under this Section an extension of two years will be allowed him, making in all a period of three years from the date of his majority, within which he may bring his suit.

(c.)—A right to sue for a hereditary office accrues to A, who at the time is insane. Six years after the accrual of the right A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this Section.

(d.)—A right to sue as landlord to recover possession from a tenant accrues to A who is an idiot. A dies three years after the accrual of the right, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This Section does not extend that time.

VIII.—When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all: but where no such discharge can be given, time will not run as against any of them until they all are free from disability.

Disability of one joint creditor.

IX.—When once time has begun to run, no subsequent disability or inability to sue stops it:

Continuous running of time.

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

X.—Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his representatives, for the purpose of following in his or their hands such property, shall be barred by any length of time.

Suits against express trustees and their representatives.

Explanation.—A purchaser in good faith for value from a trustee is not his representative within the meaning of this Section.

XI.—Suits in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.

Suits on foreign contracts.

XII.—No foreign rule of limitations shall be a defence to suit in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

Foreign limitation law.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

XIII.—In computing the period of limitation prescribed for any suit, the day on which the right to sue accrued shall be excluded.

Exclusion of day on which right to sue accrues.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, an application to the High Court for the admission of a special appeal, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded.

Exclusions in case of appeals and certain applications.

In computing the period of limitation prescribed for an application to set

aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of time of defendant's absence from British India.

XIV.—In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded, unless service of a summons to appear and answer in the suit can, during such absence, be made under the Code of Civil Procedure, Section lx.

Exclusion of time of suing *bonâ fide* in Court without jurisdiction.

XV.—In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another suit, whether in a Court of first instance or in a Court of appeal, against the same defendant or some person whom he represents, shall be excluded, where the last-mentioned suit is founded upon the same right to sue, and is instituted in good faith in a Court which from defect of jurisdiction, or other cause of a like nature, is unable to try it.

Explanation I.—In excluding the time during which a former suit was pending, the day on which that suit was instituted, and the day on which the proceedings therein ended, shall both be counted.

Explanation II.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction, shall be deemed to be prosecuting a suit within the meaning of this Section.

Exclusion of time during which commencement of suit is stayed by injunction.

XVI.—In computing the period of limitation prescribed for any suit, the commencement of which has been stayed by injunction, the time of the continuance of the injunction shall be excluded.

Exclusion of time during which judgment-debtor sues to set aside execution sale.

XVII.—In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a suit to set aside the sale shall be excluded.

Effect of death before right to sue accrues.

XVIII.—When a person who would, if he were living, have a right to sue, dies before the right accrues, the period of limitation shall be computed from the time when there is a representative in interest of the deceased capable of suing.

When a person against whom, if he were living, a right to sue would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a representative whom the plaintiff may sue.

Nothing in the former part of this Section applies to suits for the possession of land or of a hereditary office.

Effect of

XIX.—When any person having a right to sue has, by means of fraud,

been kept from the knowledge of such right or of the title on which it is founded, fraud.

and where any document necessary to establish such right has been fraudulently concealed,

the time limited for commencing a suit,

(a) against the person guilty of the fraud or accessory thereto, or,

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

XX. *a.*—No promise or acknowledgment in respect of a debt or legacy shall take the case out of the operation of this Act, unless such promise or acknowledgment is contained in some writing signed, before the expiration of the prescribed period, by the party to be charged therewith or by his agent generally or specially authorized in this behalf. Effect of acknowledgment in writing.

b.—When such writing exists, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the promise or acknowledgment was signed.

c.—When the writing containing the promise or acknowledgment is undated, oral evidence may be given of the time when it was signed. But when it is alleged to have been destroyed or lost, oral evidence of its contents shall not be received.

Explanation I.—For the purposes of this Section, promise or acknowledgment may be sufficient, though it omits to specify the exact amount of the debt or legacy, or avers that the time for payment or delivery has not yet come, or is accompanied by a refusal to pay or deliver, or is coupled with a claim to a set-off, or is addressed to any person other than the creditor or legatee;

but it must amount to an express undertaking to pay or deliver the debt or legacy or to an unqualified admission of the liability as subsisting.

Explanation II.—Nothing in this Section renders one of several partners or executors chargeable by reason only of a written promise or acknowledgment signed by another of them.

Illustrations.

Z, a bond-debtor, himself writes a letter promising to pay the debt to his creditor A. Z affixes his seal, but does not sign the letter:

Z pays part of the debt and promises orally to pay the rest:

Z publishes an advertisement, requesting his creditors to bring in their claims for examination:

In none of these cases is the debt taken out of the operation of this Act.

Effect of payment of interest as such.

XXI.—When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent generally or specially authorized in this behalf,

Effect of part-payment of principal.

or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent generally or specially authorized in this behalf,

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made:

Provided that, in the case of part-payment of principal, the debt has arisen from a contract in writing and the fact of the payment appears in the handwriting of the person making the same, on the instrument, or in his own books, or in the books of the creditor.

Effect of substituting or adding new plaintiff or defendant.

XXII.—When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have commenced when he was so made a party:

Proviso where original plaintiff dies.

Provided that, when a plaintiff dies, and the suit is continued by his representatives in interest, it shall, as regards them, be deemed to have commenced when it was instituted by the deceased plaintiff:

Proviso where original defendant dies.

Provided also, that, when a defendant dies, and the suit is continued against his representatives in interest, it shall, as regards them, be deemed to have been commenced when it was instituted against the deceased defendant.

Computation where there are successive breaches of contract.

Computation where the breach is continuing.

XXIII.—In the case of a suit for the breach of a contract, where there are successive breaches, a fresh right to sue arises, and a fresh period of limitation begins to run, upon every fresh breach; and where the breach is a continuing breach, a fresh right to sue arises, and a fresh period of limitation begins to run, at every moment of the time during which the breach continues.

Nothing in the former part of this Section applies to suits for the breach of contracts for the payment of money by instalments, where, on default made in payment of one instalment, the whole becomes due.

Illustrations.

(a.)—A contracts to pay an annuity to B for his life by quarterly instalments. A fails to pay any of the instalments. Here upon every fresh failure, a fresh right to sue arises, and a fresh period of limitation begins to run; and this Act may bar the remedy on the earlier breaches without affecting the remedy on the later breaches.

(b.)—A, a tenant, covenants with B, his landlord, to keep certain buildings in repair. At every moment of the time during which the buildings continue out of repair and B retains his right of entry, a fresh right to sue arises and a fresh period of limitation begins to run.

Continuing nuisance.

XXIV.—In the case of a continuing nuisance a fresh right to sue arises, and a fresh period of limitation begins to run, at every moment of the time during which the nuisance continues.

Illustration.

A diverts B's watercourse. At every moment of the time during which the diversion continues and B retains his right of entry, a fresh right to sue arises and a fresh period of limitation begins to run.

Suits for compensation for act becoming unlawful.

XXV.—In the case of a suit for compensation for an act lawful in itself, which becomes unlawful in case it causes damage, the period of limitation shall be computed from the time when the damage accrues.

Illustration.

A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation runs from the time of the subsidence.

Computation of time mentioned in instruments.

XXVI.—All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustration.

(a.)—A Hindú makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(b.)—A Hindú makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

Acquisition of right to easements.

XXVII.—Where the access and use of light or air to and for any building has been peaceably enjoyed therewith, as an easement, and as of right, without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation.—Nothing is an interruption within the meaning of this Section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.

(a.)—A suit is brought in 1871 for obstructing a right of way. The defendant admits the obstruction but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him claiming title thereto as an easement and as of right, without interruption, from 1st January 1850 to 1st January 1870. The plaintiff is entitled to judgment.

(b)—In a like suit also brought in 1871 the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1848 to 1868. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(c.)—In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

Exclusion in favour of reversioner of servient tenement.

XXVIII.—Provided that, when any land or water upon, over or from which any easement (other than the access and use of light and air) has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof,

the time of the enjoyment of such easement during the continuance of such interest or term, shall be excluded in the computation of the said last mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.

A sues for declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a deceased Hindú widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this Section, has only proved enjoyment for fifteen years.

Extinguishment of right to land or hereditary office.

XXIX.—At the determination of the period hereby limited to any person for instituting a suit for possession of any land or hereditary office, his right to such land or office shall be extinguished.

FIRST SCHEDULE.

(See Section 2.)

Number and year.	Subject or title.	Extent of repeal.
21 Jac. I., cap. sixteen ...	An Act for limitation of actions and for avoiding of suits in law.	The whole Statute, so far as it applies to British India.
4 Anu., cap. sixteen ...	An Act for the amendment of the law and the better advancement of justice.	Sections xvii., xviii. and xix. so far as they apply to British India.
33 Geo. III., cap. fifty-two.	An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with their exclusive trade, under certain limitations; for establishing further Regulations for the Government of the said territories, and the better administration of justice within the same; for appropriating to certain uses the revenues and profits of the said Company; and for making provision for the good order and government of the towns of Calcutta, Madras and Bombay.	So much of Section clxii. as relates to the limitation of civil suits in British India.
53 Geo. III., cap. one hundred and fifty-five.	An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with certain exclusive privileges; for establishing further Regulations for the government of the said territories, and the better administration of justice within the same; and for regulating the trade to and from the places within the limits of the said Company.	Section cxxiv., so far as it applies to British India.
9 Geo. IV., cap. seventy-four.	Administration of Criminal Justice.	So much of Section li. as relates to civil suits.
6 & 7 Vic., cap. ninety-four.	Foreign Jurisdiction Act ...	Section vii., so far as it applies to British India.
Act No. XIV. of 1840 ...	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English Law, the provisions of the Statute 9 Geo. IV., cap. 14.	From and including the words "Whereas by an Act" down to and including the words "defendants against the plaintiff."

FIRST SCHEDULE—*(continued).*

Number and year.	Subject or title.	Extent of repeal.
Act No. XI. of 1841 ...	Military Courts of Requests ...	The proviso in Section ix.
Act No. XX. of 1847 ...	Copyright Act ...	In Section xvi., the words 'actions, suits, bills.'
Act No. XII. of 1855 ...	An Act to enable Executors, Administrators or Representatives to sue and be sued for certain wrongs.	In Section i., the words "and provided such action shall be brought within one year after the death of such person," and the words "and so as such action shall be commenced within two years after the committing of the wrong."
Act No. XIII. of 1855 ...	Compensation for loss occasioned by death caused by actionable wrong.	In Section ii., the words "and that every such action shall be brought within twelve calender months after the death of such deceased person."
Act No. XXV. of 1857 ...	Forfeiture for munity, ...	Section ix.
Act No. VIII. of 1859 ...	The Code of Civil Procedure, ...	In Section cxix., the words "within a reasonable time not exceeding thirty days after any process for enforcing the judgment has been executed," and the words "within thirty days from the date of the judgment." In Section ccxxx., the words "within one month from the date of the dispossession." The last twelve words of Section ccxlvi. In section cclvi., the words "At any time within thirty days from the date of the sale." In Section cclxix., the words "if made within one month from the date of such existence or obstruction or of such dispossession, as the case may be." In Section cccxxiv., the second sentence. In Section cccxxvii., the words "within six months from the date of the award." In Section cccxxxiii., from and including the words "within the period" down to the end of the Section. In section cccxlvii., the words "within thirty days from the date of the dismissal." In Section ccclxxiii., the words "within the period prescribed for the presentation of a memorandum of appeal." So much of Section ccclxxvii. as has not been repealed.
Act No. XIV. of 1859 ...	An Act to provide for the limitation of suits. ...	The whole Act, except so much of Section xv. as does not relate to the limitation of suits.

FIRST SCHEDULE—*(continued).*

Number and year.	Subject or title.	Extent of repeal.
Act No. IX. of 1860 ...	Workmen and employers ...	So much of Section ii., as relates to the limitation of suits.
Act No. XXXI. of 1860 ...	Arms Act	So much of Section xlix. as relates to the limitation of suits.
Act No. V. of 1861 ...	Mofussil Police	So much of Section xlii. as relates to the limitation of suits.
Act No. XXIII. of 1861	Civil Procedure Code Amendment	Section xii.
Act No. XXV. of 1861 ...	Criminal Procedure Code ...	Section cccxv.
Act No. I. of 1863 ...	Civil Courts in British Burmah ...	Section xxiv.
Act No. VI. of 1863 ...	Consolidated Customs Act ...	So much of Section ccxiv. as relates to the limitation of suits
Act No. XXIII. of 1863	Claims to Waste-lands ...	So much of Section v. as relates to the limitation of suits.
Act No. VII. of 1865 ...	Government Forests Act ...	So much of Section xvi. as relates to the limitation of suits.
Act No. XX. of 1866 ...	Registration Act	Section li.
Act No. XIV. of 1868 ...	Contagious Diseases Act ...	So much of Section xxv. as relates to the limitation of suits.
Act No. XX. of 1869 ...	Volunteers	So much of Section xxvi. as relates to the limitation of suits.
Act No. X. of 1870 ...	Land Acquisition	So much of Section lviii. as relates to the limitation of suits.
Act No. IV. of 1871 ...	Coroners	In Section xlii., the words 'after the expiration of three months from such fact or failure, nor.'
Bombay Regulation V. of 1827.	A Regulation defining the Limitations, as to Time, within which Civil Actions may be prosecuted, and containing Rules of Judication respecting written Acknowledgments of Debts executed without receipt of a full consideration; also regarding Interest, the tendering payment of Debts, and the disposal of Property mortgaged or pledged.	Chapter one.

SECOND SCHEDULE.

SEE SECTION 4.

First Division : Suits.

Description of suit.	Period of limitation.	Time when period begins to run.
	Part I.—Thirty days.	
1.—To contest an award of the Board of Revenue under Act No. XXIII. of 1863 *(to provide for the adjudication of claims to waste-lands).*	Thirty days ...	When notice of the award is delivered to the plaintiff.

SECOND SCHEDULE—*(continued).*

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time when period begins to run.
	Part II.—Ninety days.	
2.—For doing, or for omitting to do, an act in pursuance of any enactment in force for the time being in British India.	Ninety days ...	When the act or omission took place.
	Part III.—Six months.	
3.—Under Act No. XIV. of 1859 *(to provide for the limitation of suits)*, Section xv., to recover possession of immovable property.	Six months ...	When the dispossession occurs.
4.—Under Act No. IX. of 1860 *(to provide for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers)*, Section i.	Ditto ...	When the wages, hire, or price of work claimed accrued due.
5.—Under Act No. V. of 1866 *(to provide a summary procedure on bills of exchange, and to amend, in certain respects, the commercial law of British India).*	Ditto ...	When the bill or promissory note becomes due and payable.
	Part IV.—One year.	
6.—Upon a Statute, Act, Regulation, or bye-law, for a penalty or forfeiture.	One year ...	When the penalty or forfeiture is incurred.
7.—For the wages of a domestic servant, artisan or labourer not provided for by this schedule, No. 4	Ditto ...	When the wages sued for accrue due.
8.—For the price of food or drink sold by the keeper of a hotel, tavern or lodging house.	Ditto ...	When the food or drink is delivered
9.—For the price of lodging ...	Ditto ...	When the lodging ends.
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	Ditto ...	When the purchaser takes actual possession under the sale sought to be impeached.
11.—For damages for infringing copyright or any other exclusive privilege.	Ditto ...	The date of the infringement.
12.—By executors, administrators, or representatives under Act No. XII. of 1855 *(to enable executors, administrators or representatives to sue and be sued for certain wrongs).*	Ditto ...	The date of the death of the person wronged.

SECOND SCHEDULE—*(continued).*

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time when period begins to run.
	Part IV.—One year—(continued).	
13.—By executors, administrators or representatives under Act No. XII. of 1855 *(to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong).*	One year ...	The date of the death of the person killed.
14.—To set aside any of the following sales:— (*a*) sale in execution of a decree of a Civil Court; (*b*) sale in pursuance of a decree or order of a Collector or other officer of revenue; (*c*) sale for arrears of Government revenue or for any demand recoverable as such arrears; (*d*) sale of a patní táluq sold for current arrears of rent. *Explanation.*—In this clause 'patní' includes any intermediate tenure saleable for current arrears of rent.	Ditto ...	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
15.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	Ditto ...	The date of the final decision or order in the case by a Court competent to determine it finally.
16.—To set aside any act of an officer of Government in his official capacity, not herein otherwise expressly provided for.	Ditto ...	The date of the act.
17.—Against Government to set aside any attachment, lease or transfer of immovable property by the revenue authorities for arrears of Government revenue.	Ditto ...	When the attachment, lease or transfer is made.
18.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Ditto ...	When the payment is made.
19.—Against Government for compensation for land acquired for public purposes.	Ditto ...	The date of determining the amount of the compensation.
20.—Like suit for compensation when the acquisition is not completed.	Ditto ...	The date of the refusal to complete.
21.—For false imprisonment.	Ditto ..	When the imprisonment ends.
22.—For any other injury to the person.	Ditto ...	When the injury is committed.
23.—For a malicious prosecution, ...	Ditto ...	When the plaintiff is acquitted.

SECOND SCHEDULE—*(continued).*

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time when period begins to run.
	Part IV.—One year,—concluded.	
24.—For libel ...	One year ...	When the libel is published.
25.—For slander ...	Ditto ...	When the words are spoken.
26.—For taking or damaging movable property.	Ditto ...	When the taking or damage occurs.
27.—For loss of service occasioned by the seduction of the plaintiff's servant or daughter. ...	Ditto ...	When the loss occurs.
28.—For inducing a person to break a contract with the plaintiff.	Ditto ...	The date of the breach.
29.—For an illegal, irregular or excessive distress. ...	Ditto ...	The date of the distress.
30.—For wrongful seizure of movable property under legal process.	Ditto ...	The date of the seizure.
	Part V.—Two years.	
31.—For obstructing a way or a water-course.	Two years ...	The date of the obstruction.
32.—For diverting a water-course ...	Ditto ...	The date of the diversion.
33.—For wrongfully detaining title deeds.	Ditto ...	When the title to the property comprised in the deeds is adjudged to the plaintiff, or the detainer's possession otherwise becomes unlawful.
34.—For wrongfully detaining any other movable property.	Ditto ...	When the detainer's possession becomes unlawful.
35.—For specific recovery of movable property in cases not provided for by this schedule, numbers 48 and 49.	Ditto ...	When the property is demanded and refused.
36.—Against a carrier for losing or injuring goods.	Ditto ...	When the loss or injury occurs.
37.—Against a carrier for delay in delivering goods.	Ditto ...	When the goods ought to be delivered.
38.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Ditto ...	The time of the perversion.
39.—Under Act No. XII of 1855 *(to enable executors, administrators or representatives to sue and be sued for certain wrongs)* against an executor, administrator or other representative.	Ditto ...	When the wrong complained of is done.
40.—For compensation for any wrong, malfeasance, nonfeasance or misfeasance independent of contract and not herein specially provided for.	Ditto ...	When the wrong is done or the default happens.

SECOND SCHEDULE—*continued.*

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time when period begins to run.
	Part V.—Two years—concluded.	
41.—For the recovery of a wife ...	Two years. ...	When possession is demanded and refused.
42.—For the restitution of conjugal rights.	Ditto ...	When restitution is demanded and refused.
	Part VI.—Three years	
43.—For trespass upon immovable property.	Three years ...	When the trespass takes place.
44.—To contest an award under any of the following Regulations of the Bengal Code :— VII. of 1822, IX. of 1825, and IX. of 1833.	Ditto ...	The date of the final award or order in the case.
45.—By a party bound by such award to recover any property comprised therein.	Ditto ..	Ditto.
46.—By any person bound by an order respecting the possession of property made under Act No. XVI. of 1838, section 1, clause 2, or Act No. XXV. of 1861, chapter 22, or Bombay Act No. V. of 1864, or by any one claiming under such person, to recover the property comprised in such order.	Ditto ...	The date of the final order in the case.
47.—For lost movable property not dishonestly misappropriated or converted.	Ditto ...	When the property is demanded and refused.
48.—For movable property acquired by theft, extortion, cheating, or dishonest misappropriation or conversion.	Ditto ...	Ditto.
49.—For the hire of animals, vehicles, boats or household furniture.	Ditto ...	When the hire becomes payable.
50.—For the balance of money advanced in payment of goods to be delivered.	Ditto ..	When the goods ought to be delivered.
51.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Ditto ...	The date of the delivery of the goods.
52.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto ...	The expiry of the period of credit.
53.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto ...	When the period of the proposed bill elapses.

SECOND SCHEDULE—*(continued).*

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time when period begins to run.
	Part VI.—Three years,—continued.	
54.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years ...	The date of the sale.
55.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto ...	When the work is done.
56.—For money payable for money lent	Ditto ...	When the loan is made.
57.—Like suit when the lender has given a cheque for the money.	Ditto ...	When the cheque is paid.
58.—For money lent under an agreement that it shall be payable on demand.	Ditto ...	When the demand is made.
59.—For money payable to the plaintiff for money paid for the defendant.	Ditto ...	When the money is paid.
60.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Ditto ...	When the money is received.
61.—For money payable for interest upon money due from the defendant to the plaintiff.	Ditto ...	When the interest becomes due.
62.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto ...	When the accounts are stated, unless where the debt is made payable at a future time and then when that time arrives.
63.—Upon a promise to do anything at a specified time, or upon the happening of a specified contingency.	Ditto ...	At the time specified or upon the contingency happening.
64.—Against a factor for an account. ...	Ditto ...	When the account is demanded or, where no such demand is made, when the agency terminates.
65.—On a single bond where a day is specified for payment.	Ditto ...	The day so specified.
66.—On a single bond where no such day is specified.	Ditto ...	The date of executing the bond.
67.—On a bond subject to a condition. ..	Ditto ...	When the condition is broken.
68.—On a bill of exchange or promissory note payable at a fixed time after date.	Ditto ...	When the bill or note falls due.
69.—On a bill of exchange payable at or after sight.	Ditto ...	When the bill is presented.
70.—On a bill exchange accepted payable at a particular place.	Ditto ...	When the bill is presented at that place.
71.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto ...	When the fixed time expires.

SECOND SCHEDULE—*(continued).*

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time when period begins to run.
	Part VI.—Three years—continued.	
72.—On a of bill exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Three years ...	When the demand is made.
73.—By the endorsee of a bill or promissory note against the endorser.	Ditto ...	The date of the endorsement.
74.—On a promissory note or bond payable by instalments.	Ditto ...	The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instalments, which provides that if default be made in payment of one instalment the whole shall be due.	Ditto ...	The time of the first default, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Ditto ...	The time of the delivery to the payee.
77.—On a dishonoured foreign bill where protest has been made and notice given.	Ditto ...	When the notice is given.
78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Ditto ...	The date of the refusal to accept.
79.—Like suit when the bill has been dishonoured by non-acceptance and afterwards by non-payment.	Ditto ...	Ditto.
80.—Suit on a bill of exchange or promissory note not herein expressly provided for.	Ditto ...	When the bill or note becomes payable.
81.—By the acceptor of an accommodation bill against the drawer.	Ditto ...	When the acceptor pays the amount.
82.—By a surety against the principal debtor.	Ditto ...	When the surety pays the creditor.
83.—By a surety against a co-surety ...	Ditto ...	When the plaintiff pays anything in excess of his own share.
84.—Upon any other contract to indemnify.	Ditto ...	When the plaintiff is actually damnified.
85.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto ...	The termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
86.—For compensation for damage caused by an injunction wrongfully obtained.	Ditto ...	When the injunction ceases.

SECOND SCHEDULE—*(continued).*

First Division: Suits:—(continued).

Description of suit.	Period of limitation.	Time when period begins to run.
	Part VI.—Three years—continued.	
87.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years.	The time of the last item admitted or proved in the account.
88.—On a policy of insurance when the sum assured is payable after proof of the death or loss has been given to or received by the insurers.	Ditto ...	When proof of the death or loss is given or received, to or by the insurers, whether by or from the plaintiff, or any other person.
89.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Ditto ...	When the insurers elect to avoid the policy.
90.—By a principal against his agent for movable property received by the latter and not accounted for.	Ditto ...	When the account is demanded and refused.
91.—Other suits by principals against agents for neglect or misconduct.	Ditto ...	When the neglect or misconduct occurs.
92.—To cancel or set aside an instrument not otherwise provided for.	Ditto ...	When the instrument is executed.
93.—To declare the forgery of an instrument issued, or registered, or attempted to be enforced.	Ditto ...	The date of the issue, registration, or attempt.
94.—For property which the plaintiff has conveyed while insane.	Ditto ...	When the plaintiff is restored to sanity and has knowledge of the conveyance
95.—For relief on the ground of fraud.	Ditto ...	When the fraud becomes known to the party wronged.
96.—To set aside a decree obtained by fraud.	Ditto ...	Ditto.
97.—For relief on the ground of mistake in fact.	Ditto ...	When the mistake becomes known to the plaintiff.
98.—For money paid upon an existing consideration, which afterwards fails.	Ditto ...	The date of the failure.
99.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Ditto ...	The date of the trustee's death, or if the loss has not then been occasioned, the date of the loss.
100.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Ditto ...	The date of the plaintiff's advance in excess of his own share.
101.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Ditto ...	When the right to contribution accrues.

SECOND SCHEDULE—*(continued).*

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time when period begins to run.
	Part VI.—Three years—(concluded).	
102.—For a seaman's wages ...	Three years ...	The end of the voyage during which the wages are earned.
103.—By a Muhammadan for exigible dower (*mu'ajjal*).	Ditto ...	When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower (*muwajjal*).	Ditto ...	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto ...	The date of the receipt.
106.—For an account and a share of the profits of a dissolved partnership.	Ditto ...	The date of the dissolution.
107.—By a Hindú manager of a joint estate for contribution in respect of a payment made by him on account of the estate.	Ditto ...	The date of the payment.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto ..	When the trees are cut down.
109.—For the profits of immovable property belonging to the plaintiff wrongfully received by the defendant.	Ditto ...	When the profits are received, or where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, the date of the decree of the Appellate Court.
110.—For arrears of rent.	Ditto ...	When the arrears become due.
111.—By a vendor of immovable property to enforce his lien for unpaid purchase-money.	Ditto ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	Ditto ..	When the call was made.
113.—For specific performance of a contract.	Ditto ...	When the plaintiff has notice that his right is denied.
114.—For the rescission of a contract.	Ditto ...	When the contract is executed by the plaintiff.
115.—For the breach of any contract, express or implied, not in writing registered, and not herein specially provided for.	Ditto ..	When the contract is broken, or (where there are successive breaches) when the breach sued for occurs, or (where the breach is continuing) when it ceases.

SECOND SCHEDULE—*(continued).*

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time when period begins to run.
	Part VII.—Six years.	
116.—Upon a judgment obtained in a foreign country.	Six years ...	The date of the judgment.
117.—On a promise or contract in writing registered.	Ditto ...	When the period of limitation would begin to run against a suit brought on a similar promise or contract not registered.
118.—Suit for which no period of limitation is provided elsewhere in this schedule.	Ditto ...	When the right to sue accrues.
	Part VIII.—Twelve years.	
119.—By an auction-purchaser or any one claiming under him to avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, the estate being, by virtue of such sale, freed from incumbrances and under-tenures.	Twelve years ...	When the sale becomes final and conclusive.
120.—To avoid incumbrances or under-tenures in a *patní táluq* or other saleable tenure sold for arrears of rent, the táluq or tenure being, by virtue of such sale, freed from incumbrances and under-tenures.	Ditto ...	When the sale becomes final and conclusive.
121.—Upon a judgment obtained in British India, or a recognizance.	Ditto ...	The date of the judgment or recognizance.
122.—For a legacy or for a distributive share of the movable property of a testator or intestate.	Ditto ..	When the legacy or share becomes payable or deliverable.
123.—For possession of an hereditary office.	Ditto ...	When the defendant, or some person through whom he claims, took possession of the office adversely to the plaintiff. *Explanation.*—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
124.—Suit during the life of a Hindú widow by a Hindú entitled to the possession of land on her death to have an alienation made by the widow declared to be void except for her life.	Ditto ...	The date of the alienation.
125.—By a Hindú governed by the law of the Mitákshará to set aside his father's alienation of ancestral property.	Ditto ...	The date of the alienation.

SECOND SCHEDULE—*(continued).*

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time when period begins to run.
	Part VIII.—Twelve years—(continued).	
126.—Like suit by a Hindú governed by the law of the Dáyabhága.	Twelve years ...	When the father dies.
127.—By a Hindú excluded from joint-family property to enforce a right to share therein.	Ditto ...	When the plaintiff claims and is refused his share.
128.—By a Hindú for maintenance ...	Ditto ...	When the maintenance sued for is claimed and refused.
129.—To establish or set aside an adoption.	Ditto ...	The date of the adoption, or (at the option of the plaintiff) the date of the death of the adoptive father.
130.—For the resumption or assessment of rent free land.	Ditto ...	When the right to resume or assess the land first accrued : Provided that no such suit shall be maintained where the land forms part of a permanently-settled estate, and has been held rent-free from the time of the Permanent Settlement.
131.—To establish a periodically recurring right.	Ditto ...	When the plaintiff is first refused the enjoyment of the right.
132.—For money charged upon immovable property. *Explanation.*—The allowance and fees called *málikána* and *haqqs* shall, for the purposes of this clause, be deemed to be money charged upon immovable property.	Ditto ...	When the money sued for becomes due.
133.—To recover movable property conveyed in trust, deposited or pawned and afterwards bought from the trustee, depositary or pawnee in good faith and for value.	Ditto ...	The date of the purchase.
134.—To recover possession of immovable property conveyed in trust or mortgaged and afterwards purchased from the trustee or mortgagee in good faith and for value.	Ditto ...	Ditto.
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immovable property mortgaged.	Ditto ...	When the mortgagee is first entitled to possession.
136.—By a purchaser at a private sale for possession of the immovable property sold, when the vendor was out of possession at the date of the sale.	Ditto ...	When the vendor is first entitled to possession.

SECOND SCHEDULE—*(continued).*

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time when period begins to run.
	Part VIII.—Twelve years,—(continued.)	
137.—Like suit by a purchaser at a sale in execution of a decree, when the execution-debtor was out of possession at the date of the sale.	Twelve years ...	When the execution-debtor is first entitled to possession.
138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when he never has had possession.	Ditto ...	The date of the sale.
139.—Like suit when the purchaser had possession, but was afterwards dispossessed.	Ditto ...	The date of the dispossession.
140.—By a landlord to recover possession from a tenant.	Ditto ...	When the tenancy is determined.
141.—By a remainderman, a reversioner, (other than a landlord) or a devisee, for possession of immovable property.	Ditto ...	When his estate falls into possession.
142.—Like suit by a Hindú entitled to the possession of immovable property on the death of a Hindú widow.	Ditto ...	When the widow dies.
143.—For possession of immovable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Ditto ...	The date of the dispossession or discontinuance.
144.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Ditto ...	When the forfeiture was incurred or the condition broken.
145.—For possession of immovable property or any interest therein not hereby otherwise specially provided for.	Ditto ...	When the possession of the defendant, or of some person through whom he claims, became adverse to the plaintiff.
146.—For a declaration of right to an easement.	Ditto ...	When the easement ceased to be enjoyed by the plaintiff, or the persons on whose behalf he sues.
	Part IX.—Thirty years.	
147.—Against a depositary or pawnee to recover movable property deposited or pawned.	Thirty years ...	The date of the deposit or pawn, unless where an acknowledgement of the title of the depositor or pawnor, or of his right of redemption, has before the expiration of the prescribed period been made in writing signed by the depositary, or pawnee, or some person claiming under him, and, in such case, the date of the acknowledgment.

SECOND SCHEDULE—*(continued).*

First Division: Suits—(concluded).

BENGAL SECRETARIAT LIBRARY.

Description of suit.	Period of limitation.	Time when period begins to run.
	Part X.—Sixty years.	
148.—Against a mortgagee to recover possession of immovable property mortgaged.	Sixty years ...	The date of the mortgage, unless where an acknowledgment of the title of the mortgagor or of his right of redemption has, before the expiration of the prescribed period, been made in writing signed by the mortgagee or some person claiming under him, and, in such case, the date of the acknowledgment: Provided that all claims to redeem arising under instruments of mortgage of immovable property situate in British Burmah, which have been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that Province immediately before the same day.
149.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immovable property mortgaged.	Ditto ...	When any part of the principal or interest was last paid on account of the mortgage debt.
150.—Any suit in the name of the Secretary of State for India in Council.	Ditto ...	When the right to sue accrued.

Second Division: Appeals.

Description of appeals.	Period of limitation.	Time when period begins to run.
151.—Under the Code of Civil Procedure to the Court of a District Judge.	Thirty days ...	The date of the decree appealed against.
152.—Under the Code of Criminal Procedure to any Court other than the High Court.	Ditto ...	The date of the sentence or order appealed against.
153.—Under the same Code to the High Court.	Sixty days ...	Ditto.
154.—Under the Code of Civil Procedure to the High Court.	Ninety days ...	The date of the decree appealed against.

SECOND SCHEDULE—*(continued).*

Third Division: Applications.

Description of application.	Period of limitation.	Time when period begins to run.
155.—Under the Code of Civil Procedure to set aside an award.	Ten days ...	When the award is submitted to the Court and notice of the submission has been given to the persons and in manner prescribed by the High Court.
156.—By a plaintiff for an order to set aside a judgment by default.	Thirty days ...	The date of the judgment.
157.—By a defendant for an order to set aside a judgment *exparte*.	Ditto ...	The date of executing any process for enforcing the judgment.
158.—Under the Code of Civil Procedure, by a person dispossessed of immovable property and disputing the right of the decreeholder to be put into possession.	Ditto ...	The date of the dispossession.
159.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale.	Ditto ...	The date of the sale.
160.—Complaining of resistance or obstruction to delivery of possession of immovable property sold in execution of a decree, or of dispossession in the delivery of possession to the purchaser of such property.	Ditto ...	The date of the resistance, obstruction or dispossession.
161.—For re-admission of an appeal dismissed for want of prosecution.	Ditto ...	The date of the dismissal.
162.—For leave to appeal as a pauper.	Ninety days ..	The date of the decree appealed against.
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164.—For a review of judgment.	Ditto ...	The date of the decree.
165.—Under the Code of Civil Procedure, Section cccxxvii, that an award be filed in Court.	Six months ...	The date of the award.
166.—For the execution of a decision (other than a decree or order passed in a regular suit or an appeal) of a Civil Court or of a Revenue Court	One year ...	The date of the decision, or of taking some proceeding to enforce or keep in force the decision.
167.—For the execution of a decree or order of any Civil Court not provided for by No 169.	Three years ...	The date of the decree or order, or (where there has been an appeal) the date of the final decree or order of the Appellate Court,

SECOND SCHEDULE—*(concluded).*

Third Division: Applications—(concluded).

Description of application.	Period of limitation.	Time when period begins to run.
		or (where there has been a review of judgment) the date of the decision passed on the review, or (where the application next hereinafter mentioned has been made) the date of applying to the Court to enforce, or keep in force, the decree or order, or (where the notice next hereinafter made has been issued) the date of issuing a notice under the Code of Civil Procedure, Section cxvi., or (where the application is to enforce payment of an instalment which the decree directs to be paid at a specified date) the date so specified.
168.—For the execution of any such decree or order of which a certified copy has been registered under the Indian Registration Act.	Six years ...	The date of the decree or order, or (where there has been an appeal) the date of the final decree or order of the Appellate Court, or (where there has been a review of judgment) the date of the decision passed on the review.
169.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction.	Twelve years ...	When a a present right to enforce the judgment, decree or order accrued to some person capable of releasing the right: Provided that, when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be.

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Nothing hereinafter continued shall be deemed to have the force of law.

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WHITLEY STOKES,

Secretary to the Government of India.

ADDENDA.

ACT X. OF 1865.

THE LAW OF INTESTATE AND TESTAMENTARY SUCCESSION IN BRITISH INDIA APPLICABLE TO ALL BRITISH SUBJECTS, EXCEPTING HINDOOS, MAHOMEDANS AND BUDDHISTS.

(Received the assent of the Governor-General on the 16th March 1865.)

AN ACT TO AMEND AND DEFINE THE LAW OF INTESTATE AND TESTAMENTARY SUCCESSION IN BRITISH INDIA.

Preamble

Whereas it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India; It is enacted as follows:—

PART I.

PRELIMINARY.

Short Title.

I.—This Act may be cited as "The Indian Succession Act, 1865."

This Act to constitute the Law of British India in cases of Intestate or Testamentary Succession.

II.—Except as provided by this Act or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of Intestate or Testamentary Succession.

Interpretation Clause.

III.—In this Act, unless there be something repugnant in the subject or context—

"Number." "Gender."

Words importing the singular number include the plural: words importing the plural number include the singular; and words importing the male sex include females.

"Person."

"Person" includes any Company or Association, or body of persons, whether incorporated or not.

"Year" "Month."

"Year" and "month" respectively mean a year and month reckoned according to the British Calendar.

"Immovable property."

"Immovable property" includes land, incorporeal tenements and things attached to the earth, or permanently fastened to anything which is attached to the earth.

"Movable property" means property of every description except immovable property. "Movable property."

"Province" includes any division of British India having a Court of the last resort. "Province."

"British India" means the territories which are or may become vested in Her Majesty or her successors by the Statute 21 and 22 Vic., Cap. 106, other than the Settlement of Prince of Wales' Island, Singapore, and Malacca. "British India."

"District Judge" means the Judge of a principal Civil Court of original jurisdiction. "District Judge."

"Minor" means any person who shall not have completed the age of eighteen years, and "minority" means the status of such person. "Minor" "Minority."

"Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death. "Will."

"Codicil" means an instrument made in relation to a Will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the Will. "Codicil."

"Probate" means the copy of a Will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator. "Probate."

"Executor" means a person to whom the execution of the last Will of a deceased person is, by the testator's appointment, confided. "Executor."

"Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor. "Administrator."

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer Executive Government in such part; and "High Court" shall mean the highest Civil Court of Appeal therein. "Local Government." "High Court."

IV.—No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried. Interest and powers not acquired nor lost by marriage.

PART II.

OF DOMICILE.

Law regulating succession to a deceased person's immovable and movable property, respectively.

V.—Succession to the immovable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death. Succession to the movable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Illustrations.

(a)—A, having his domicile in British India, dies in France, leaving movable property in France, movable property in England, and property, both movable and immovable, in British India. The succession to the whole is regulated by the law of British India.

(b.)—A, an Englishman having his domicile in France, dies in British India, and leaves property, both movable and immovable, in British India. The succession to the movable property is regulated by the rules which govern, in France, the succession to the movable property of an Englishman dying domiciled in France, and the succession to the immovable property is regulated by the law of British India.

One domicile only affects succession to movables.

VI.—A person can only have one domicile for the purpose of succession to his movable property.

Domicile of origin of person of legitimate birth.

VII.—The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled: or, if he is a posthumous child in the country in which his father was domiciled at the time of the father's death.

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

Domicile of origin of illegitimate child.

VIII.—The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Continuance of domicile of origin.

IX.—The domicile of origin prevails until a new domicile has been acquired.

Acquisition of new domicile.

X.—A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's Civil or Military Service, or in the exercise of any profession or calling.

Illustrations.

(a.)—A, whose domicile of origin is in England, proceeds to British India, where he settles as a Barrister or a Merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(b.)—A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(c.)—A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(d.)—A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(e.)—A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(f.)—A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire domicile in British India.

(g.)—A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

Special mode of acquiring domicile in British India.

XI.—Any person may acquire a domicile in British India by making and depositing in some Office in British India (to be fixed by the Local Government), a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

Domicile not acquired by residence in a country merely as the representative of a foreign Government, or by residence with him as part of his family or as a servant.

XII.—A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

Continuance of new domicile.

XIII.—A new domicile continues until the former domicile has been resumed, or another has been acquired.

Minor's domicile.

XIV.—The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

Domicile acquired by a woman on marriage.

XV.—By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Wife's domicile during marriage.

XVI.—The wife's domicile during the marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Except in cases stated, minor cannot acquire a new domicile.

XVII.—Except in the cases above provided for, a person cannot during minority acquire a new domicile.

Lunatic's acquisition of new domicile.

XVIII.—An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Succession to a person's movable property in British India in absence of proof of his domicile elsewhere.

XIX.—If a man dies leaving movable property in British India; in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

PART III.

OF CONSANGUINITY.

Kindred or consanguinity.

XX.—Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

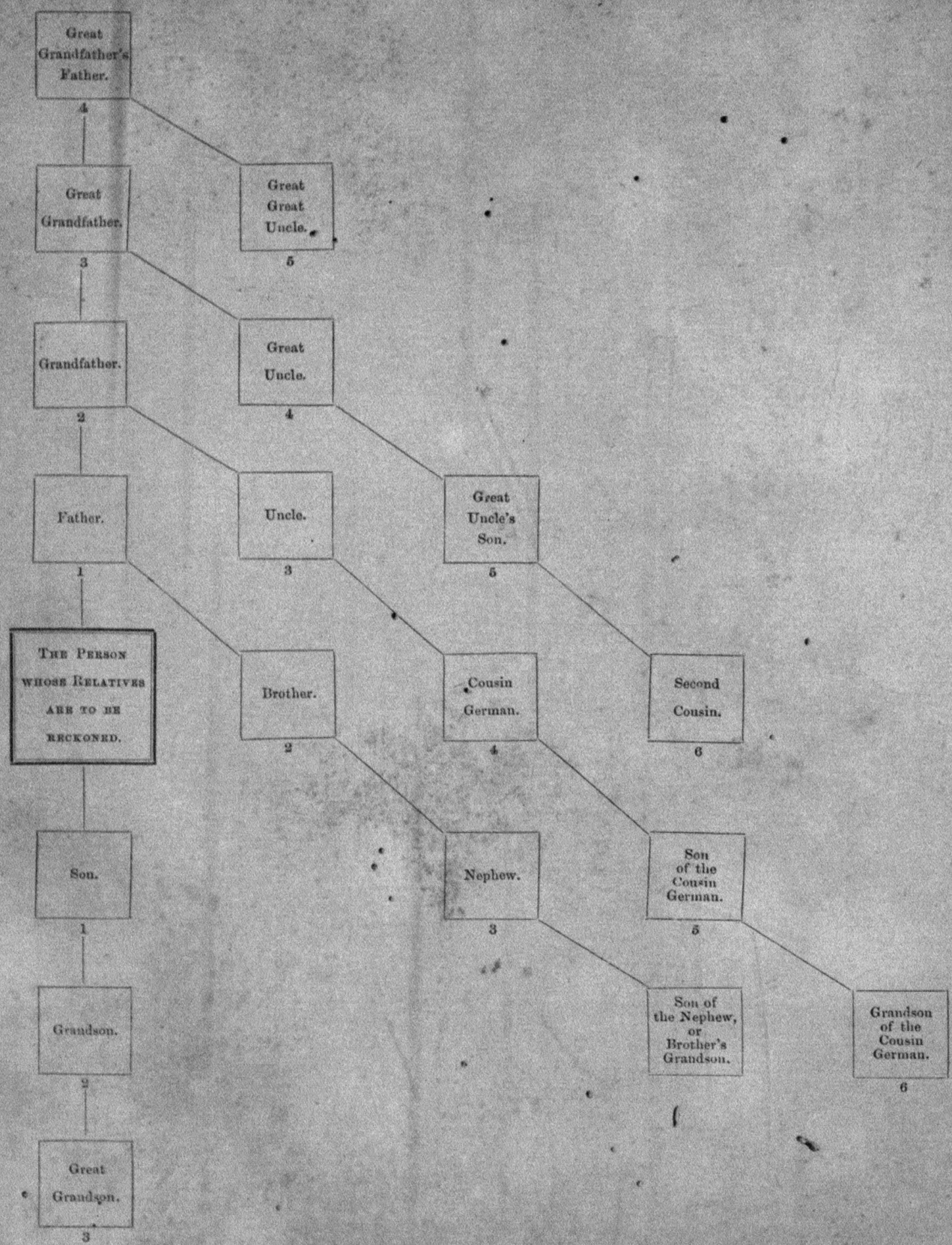
Lineal consanguinity.

XXI.—Lineal consanguinity is that which subsists between two pesons one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line. Every generation constitutes a degree, either ascending or descending. A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

Collateral consanguinity.

XXII.—Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other. For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the

TABLE OF CONSANGUINITY.



common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

XXIII.—For the purpose of sucession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother; nor between those who are related to him by the full blood, and those who are related to him by the half blood; nor between those who were actually born in his lifetime, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

Persons held for purpose of succession to be similarly related to the deceased.

XXIV.—In the annexed table of kindred the degrees are computed as far as the sixth, and are marked by numeral figures.

Mode of computing degrees of kindred.

The person whose relatives are to be reckoned, and his cousin-german, or first cousin are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor the grandfather; and from him one of descent to the uncle, and to the cousin-german; making in all four degrees.

A grandson of the brother and a son of the uncle, *i. e.*, a great nephew and a cousin-german, or in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

PART IV.

OF INTESTACY.

XXV.—A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

As to what property a deceased person is considered to have died intestate.

Illustrations.

(a.)—A has left no Will. He has died intestate in respect of the whole of his property.

(b.)—A has left a Will, whereby he has appointed B his executor; but the Will contains no other provisions. A has died intestate in respect of the distribution of his property.

(c.)—A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(d.)—A has bequeathed 1,000*l* to B, and 1,000*l* to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000*l* and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l*.

Devolution of such property.

XXVI.—Such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Explanation.—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marraige she has been excluded from her distributive share of her husband's estate.

Where the intestate has left a widow and lineal descendants, or a widow and kindred only, or a widow and no kindred.

XXVII.—Where the intestate has left a widow, if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained. If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained. If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

Where the intestate has left no widow, and where he has left no kindred.

XXVIII.—Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants according to the rules herein contained: and if he has left none who are of kindred to him, it shall go to the Crown.

PART V.

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY. (A) WHERE HE HAS LEFT LINEAL DESCENDANTS.

Rules of distribution.

XXIX.—The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follows:—

Where the intestate has left a child or children only.

XXX.—Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

Where the intestate has left no child, but a grandchild or grandchildren.

XXXI.—Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.

Illustrations.

(a).—A has three children, and no more, John, Mary, and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leav-

ing those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.

(b.)—But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(c.)—A has two children, and no more; John and Mary. John died before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

Where the intestate has left only great-grandchildren or lineal descendants in a remoter degree.

XXXII.—In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

Where the intestate leaves lineal descendants not all in the same degree of kindred to him, and those through whom the more remote descend are dead.

XXXIII.—If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations.

(a.)—A had three children, John, Mary, and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A intestate, one third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(b.)—A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is alloted to each grandchild; and the rmaining one-ninth is equally divided between the two great-grandchildren.

(c.)—A has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry; one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(b.)—Where the Intestate has left no lineal descendants.

Rules of dis-

XXXIV.—Where an intestate has left no lineal descendants, the rules for

tribution where the intestate has left no lineal descendants.

the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:—

Where intestate's father is living.

XXXV.—If the intestate's father be living, he shall succeed to the property.

Where intestates father is dead, but his mother, brothers and sisters are living.

XXXVI.—If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Illustration.

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half-blood, takes one-fourth.

Where intestate's father is dead and his mother, a brother or sister, and children of any deceased brother or sister are living.

XXXVII.—If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's life-time are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

A the intestate leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half-blood, who was the son of his father but not of his mother. The mother takes one fifth, John and Henry each take one fifth, the child of Mary takes one-fifth, and the two children of George divided the remaining one-fifth equally between them.

Where intestate's father is dead and his mother and the children of any deceased brother or sister are living.

XXXVIII.—If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the share which their respective parents would have taken if living at the intestate's death.

Illustration.

A the intestate leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

Where intestate's father is dead, but his mother is living and there is no brother nor sister nor nephew.

XXXIX.—If the intestate's father is dead, but the intestate's mother is living, and there is neither brother nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

XL.—Where the intestate has left neither lineal descendant nor father nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the share which their respective parents would have taken if living at the intestate's death.

Where intestate has left neither lineal descendant nor father nor mother.

XLI.—If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Where intestate has left neither lineal descendant nor parent, nor brother, nor sister.

Illustrations.

(a).—A, the intestate, has left a grandfather and a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(b).—A, the intestate, has left a great-grandfather or great-grandmother, and uncles and aunts and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(c).—A, the intestate, left a great-grandfather, an uncle, and a nephew, but no relatives standing nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(d).—Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

XLII. Where a distributive share in the property of a person who has died intestate shall be claimed by a child or any descendant of a child of such person, no money or other property which the intestate may during his life have paid, given, or settled to, or for the advancement of the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

Children's advancements not to be brought into hotchpot.

PART VI.

OF THE EFFECT OF MARRIAGE AND MARRIAGE SETTLEMENTS ON PROPERTY.

XLIII.—The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

Rights of widower and widow respectively.

XLIV.—If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she

No rights to property not comprised in an ante-nuptial settlement, acquired by marriage

between a person domiciled and a person not domiciled in British India.

would not acquire thereby if both were domiciled in British India at the time of the marriage.

Settlement of minor's property in contemplation of marriage.

XLV.—The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father, or if he be dead or absent from British India, with the approbation of the High Court.

PART VII.

OF WILLS AND CODICILS.

Persons capable of making Wills.

XLVI.—Every person of sound mind and not a minor may dispose of his property by will.

Explanation 1.—A married woman may dispose by Will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind are not thereby incapacitated for making a Will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a Will during an interval in which he is of sound mind.

Explanation 4.—No person can make a Will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Illustrations.

(a). A can perceive what is going on his immediate neighbourhood, and can answer familiar questions, but has not competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his Will. A cannot make a valid Will.

(b). A executes an instrument purporting to be his Will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid Will.

(c). A being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes his Will. This is a valid Will.

Testamentary guardian.

XLVII.—A father whatever his age may be, may by Will appoint a guardian or guardians for his child during minority.

Will obtained by fraud, coercion or importunity.

XLVIII.—A Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Illustrations.

(a.)—A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a Will in his, A's favour; such Will has been obtained by fraud, and is invalid.

(b.)—A by fraud and deception prevails upon the testator to bequeath a legacy, to him. The bequest is void.

(c.)—A, being a prisoner by lawful authority, makes his Will. The Will is not invalid by reason of the imprisonment.

(d.)—A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(e.)—A being of sufficient intellect, if undisturbed by the influence of others, to make a Will, yet being so much under the control of B that he is not a free agent, makes a Will dictated by B. It appears that he would not have executed the Will but for fear of B. The Will is invalid.

(f.)—A being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a Will of a certain purport, and does so merely to purchase peace, and in submission to B. The Will is invalid.

(g.)—A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a Will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his Will in the manner recommended by B. The Will is not rendered invalid by the intercession and persuasion of B.

(h.)—A with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his Will, by which he leves a legacy to A. The bequest is not rendered invalid by the attention and the flattery of A.

Will may be revoked or altered.

XLIX—A Will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by Will.

PART VIII.

OF THE EXECUTION OF UNPRIVILEGED WILLS.

Execution of unprivileged Wills.

L.—Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, must execute his Will according to the following rules :—

First.—The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator or the signature of the

person signing for him shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

Third.—The Will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the Will, or have seen some other person sign the Will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Incorporation of papers by reference.

LI.—If a testator, in a Will or Codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the Will or Codicil in which it is referred to.

PART IX.

OF PRIVILEGED WILL.

Privileged Will.

LII.—Any soldier being employed in an expedition, or engaged in an actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a Will made as is mentioned in the fifty-third Section. Such Wills are called privileged Wills.

Illustrations.

(a.)—A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged Will.

(b.)—A is at sea in a merchant ship, of which he is the purser. He is a mariner, and being at sea can make a privileged Will.

(c.)—A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged Will.

(d.)—A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged Will.

(e.)—A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged Will.

(f.)—A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged Will.

Mode of making, and rules for executing, privileged Wills.

LIII.—Privileged Wills may be in writing, or may be made by word of mouth. The execution of them shall be governed by the following rules :—

First.—The Will may be written wholly by the testator, with his own hand In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a Will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his Will, if it be shown that it was written by the testator's directions, or that he recognized it as his Will. If it appear on the face of the instrument, that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandanment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his Will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his Will.

Fifth.—If the soldier or mariner shall in the presence of two witnesses have given verbal instructions for the preparation of his Will, and they shall have been reduced into writing in his life-time, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his Will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a Will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A Will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged Will.

PART X.

OF THE ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS.

Effect of gift to attesting witness.

LIV.—A Will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband: but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

Explanation.—A legatee under a Will does not lose his legacy by attesting a Codicil which confirms the Will.

Witness not disqualified by interest or by being executor.

LV.—No person, by reason of interest in or of his being an executor of a Will, is disqualified as a witness to prove the execution of the Will or to prove the validity or invalidity thereof.

Revocation of Will by testator's marriage.

LVI.—Every Will shall be revoked by the marriage of the maker, except a Will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not in default of such appointment pass to his or her executor; or administrator, or to the person entitled in case of intestacy.

Power of appointment defined.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

Revocation of unprivileged Will or Codicil.

LVII.—No unprivileged Will or Codicil, nor any part thereof, shall be revoked or otherwise than by marriage, or by another Will or Codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged Will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations.

(a.)—A has made an unprivileged Will; afterwards A makes another unprivileged Will which purports to revoke the first. This is a revocation.

(b.)—A has made an unprivileged Will. Afterwards, A being entitled to make a privileged Will, makes a privileged Will, which purports to revoke his unprivileged Will. This is a revocation.

Effect of obliteration, interlineation, or alteration in unprivileged Will.

LVIII.—No obliteration, interlineation, or other alteration made in any unprivileged Will after the execution thereof shall have any effect, except so far as the words or meaning of the Will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the Will; save that the Will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the Will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the Will.

Revocation of privileged Will or Codicil.

LIX.—A privileged Will or Codicil may be revoked by the testator, by an unprivileged Will or Codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give

validity to a privileged Will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged Will or Codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged Will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged Will.

Revival of unprivileged Will.

Extent of revival of Will or Codicil partly revoked and afterwards wholly revoked.

LX.—No unprivileged Will or Codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a Codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any Will or Codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the Will or Codicil.

PART XI.

OF THE CONSTRUCTION OF WILLS.

Wording of Will.

LXI.—It is not necessary that any technical words or terms of art shall be used in a Will but only that the wording shall be such that the intentions of the testator can be known therefrom.

Enquiries to determine questions as to object or subject of Will.

LXII.—For the purpose of determining questions as to what person or what property is denoted by any words used in a Will, a Court must inquire into every material fact relating to the persons who claim to be interested under such Will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(a.) A, by his Will, bequeaths 1,000 Rupees to his eldest son, or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the Will applies.

(b.) A, by his Will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(c.) A, by his Will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

Misnomer or misdescription of object.

LXIII.—Where the words used in the Will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect. A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(a.) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(b.) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(c.) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(d.) The testator gives his residuary estate to be divided among "his seven children," and proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(e.) The testator having six grandchildren, makes a bequest to "his six grandchildren," and proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(f.) The testator bequeaths "1,000 Rupees to each of the three children of A." At the date of the Will, A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 Rupees.

When words may be supplied.

LXIV.—Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred Rupees" to his daughter B. A shall take a legacy of five hundred Rupees.

Rejection of erroneous particulars in description of subject.

LXV.—If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the Will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Illustrations.

(a.) A bequeaths to B "his marsh lands lying in L, and in the occupation of X." The testator had marsh lands lying in L, but had no marsh lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh lands of the testator lying in L shall pass by the bequest.

(b.) The testator bequeaths to A "his zamíndárí of Rampore." He had an estate at Rampore, but it was a taluk and not a zamíndárí. The taluk passes by this bequest.

When part of description may not be rejected as erroneous.

LXVI.—If the Will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

Explanation.—In judging whether a case falls within the meaning of this Section, any words which would be liable to rejection under the sixty-fifth Section are to be considered as struck out of the Will.

Illustrations.

(a.) A bequeaths to B "his marsh lands lying in L, and in the occupation of X." The testator had marsh lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh lands lying in L as were in the occupation of X.

(b.) A bequeaths to B "his marsh lands lying in L, and in the occupation of X, comprising 1,000 bighas of land." The testator had marsh lands lying in L, some of which were in the occupation of X and some not in the occupation of X. The measurement is wholly inapplicable to the marsh lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the Will, and such of the testator's marsh lands lying in L, as were in the occupation of X, shall alone pass by the bequest.

Extrinsic evidence admissible in case of latent ambiguity.

LXVII.—Where the words of the Will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations.

(a.) A man having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the Will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(b.) A, by his Will, leaves to B "his estate called Sultánpur Khurd." It turns out that he had two estates called Sultánpur Khurd. Evidence is admissible to show which estate was intended.

Extrinsic evidence inadmissible in cases of patent ambiguity of deficiency.

LXVIII.—Where there is an ambiguity or deficiency on the face of the Will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(a.) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his Will he bequeaths 1,000 Rupees to "his aunt Caroline" and 1,000 Rupees to "his cousin Mary,"

and afterwards bequeaths 2,000 Rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the Will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the seventy-sixth Section.

(b.) A bequeaths 1,000 Rupees to , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(c.) A bequeaths to B Rupees, or "his estate of " Evidence is not admissible to show what sum or what estate the testator intended to insert.

Meaning of any clause to be collected from entire Will.

LXIX.—The meaning of any clause in a Will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a Codicil is to be considered as part of the Will.

Illustrations.

(a.) The testator gives to B a specific fund or property at the death of A. and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(b.) Where a testator having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his Will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B, and all the rest of my estate to A."

When words may be understood in a restricted sense, and when in a sense wider than usual.

LXX.—General words may be understood in a restricted sense where it may be collected from the Will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the Will that the testator meant to use them in such wider sense.

Illustrations.

(a.) A testator gives to A "his farm in the occupation of B," and to C "all his marsh lands in L." Part of the farm in the occupation of B consists of marsh lands in L, and the testator also has other marsh lands in L. The general words, "all his marsh lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh lands in L.

(b.) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a shipmate) his red box, clasp-knife, and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(c.) A, by his Will bequeathed to B all his household furniture, plate, linen, china, books, pictures, and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

LXXI.—Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

Where a clause is open to two constructions, that which has some effect is to be preferred.

LXXII.—No part of a Will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

No part of Will to be rejected, if reasonable construction can be put on it.

LXXIII.—If the same words occur in different parts of the same Will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Interpretation of words repeated in different parts of Will.

LXXIV.—The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Testator's intention to be effectuated as far as possible.

Illustration.

The testator by a Will made on his death-bed bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under the hundred and fifth Section, but it shall take effect so far as regards the gift to C D.

LXXV.—Where two clauses or gifts in a Will are irreconcileable, so that they cannot possibly stand together, the last shall prevail.

The last of two inconsistent clauses prevails.

Illustrations.

(a.) The testator by the first clause of his Will leaves his estate of Rámnagar "to A," and by the last clause of his Will leaves it "to B and not to A." B shall have it.

(b.) If a man at the commencement of his Will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

LXXVI.—A Will or bequest not expressive of any definite intention is void for uncertainty.

Will or bequest void for uncertainty.

Illustration.

If a testator says—"I bequeath goods to A;" or "I bequeath to A:" or "I leave to A all the goods mentioned in a Schedule," and no Schedule is found; or "I bequeath 'money,' 'wheat,' 'oil,' or the like," without saying how much, this is void.

LXXVII.—The description contained in a Will, of property the subject of gift, shall, unless a contrary intention appear by the Will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Words describing subject refer to property answering that description at testator's death.

LXXVIII.—Unless a contrary intention shall appear by the Will a

Power of ap-

pointment executed by general bequest.

bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power; and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power.

Implied gift to the objects of a power in default of appointment.

LXXIX.—Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint; and the Will does not provide for the event of no appointment being made; if the power given by the Will be not exercised, the property belongs to all the objects of the power in equal shares.

Illustration.

A, by his Will, bequeaths a fund to his wife for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

Bequest to "heirs," &c., of a particular person without qualifying terms.

LXXX.—Where a bequest is made to the "heirs," or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or, "next of kin," of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Illustrations.

(a.) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(b) A bequeaths 10,000 Rupees "to B for his life, and after the death of B to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(c) A leaves his property to B; but if B dies before him, to B's next of kin: B dies before A; the property devolves as if it had belonged to B, and he had died intestate leaving assets for the payment of his debts independently of such property.

(d.) A leaves 10,000 Rupees "to B for his life, and after his decease, to the heirs of C.' The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

Bequest to "representatives," &c., of a particular person.

LXXXI.—Where a bequest is made to the "representatives," or "legal representatives," or "personal representatives," or, "executors or administrators" of a particular person, and the class so designated forms the direct and

independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

Illustration.

A bequest is made to the "legal representative of A." A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid: if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

Bequest without words of limitation.

LXXXII.—Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the Will that only a restricted interest was intended for him.

Bequest in the alternative.

LXXXIII.—Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons;—if a contrary intention does not appear by the Will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but if he be then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations.

(a.) A bequest is made to A or to B. A survives the testator. B takes nothing.

(b.) A bequest is made to A or to B. A dies after the date of the Will, and before the testator. The legacy goes to B.

(c.) A bequest is made to A or to B. A is dead at the date of the Will. The legacy goes to B.

(d.) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(e.) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

(f.) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(g.) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

Effect of words describing a class added to a bequest to a person.

LXXXIV.—Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the Will.

Illustrations.

(a) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors and administrators.

In each of these cases, A takes the whole interest which the testator had in the property.

(b.) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(c.) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

Bequest to class of persons under a general description only.

LXXXV.—Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Construction of terms.

LXXXVI.—The words "children" in a Will applies only to lineal descendants in the first degree; the words "grandchildren" applies only to lineal descendants in the second degree of the person whose "children," or "grand children," are spoken of, the words "nephews" and "nieces" apply only to children of brothers or sisters; the words "cousins" or "first cousins," or "cousins-german" apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german," are spoken of; the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent, of the person whose "first cousins once removed" are spoken of; the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of; the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of. Words expressive of collateral relationship apply alike to relatives of full and of half blood. All words expressive of relationship apply to a child in the womb who is afterwards born alive.

Words expressing relationship denote only legitimate relatives, or failing such, relatives reputed legitimate.

LXXXVII.—In the absence of any intimation to the contrary in the Will, the term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or where there is no such legitimate relative, a person who has acquired, at the date of the Will, the reputation of being such relative.

Illustrations.

(a.) A having three children, B, C, and D, of whom B and C are legitimate and D is illegitimate leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares, to the exclusion of D.

(b.) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(c.) A, having in his Will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(d.) A leaves a legacy to the "children of B." B is dead and has left none but illegitimate children. All those who had, at the date of the Will, acquired the reputation of being the children of B are objects of the gift.

(e.) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had at the date of the Will acquired the reputation of being children of B. After the date of the Will, and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(f.) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired at the date of the Will the reputation of being the child of A by the woman designated. B takes the legacy.

(g.) A makes a bequest in favour of the child to be born of a woman, who never becomes his wife. The bequest is void.

(h.) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

Rules of construction where a Will purports to make two bequests to the same person.

LXXXVIII.—Where a Will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the Will to show what he intended, the following rules shall prevail in determining the construction to be put upon the Will :—

First.—If the same specific thing is bequeathed twice to the same legatee in the same Will, or in the Will and again in a Codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same Will or one and the same Codicil purports to make in two places a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies of unequal amount are given to the same person in the same Will, or in the same Codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given

to the same legatee, one by a Will and the other by a Codicil, or each by a different Codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word Will does not include a Codicil.

Illustrations.

(a.) A having ten shares, and no more, in the Bank of Bengal, made his Will, which contains near its commencement, the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the Will concludes with the words "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(b.) A having one diamond ring, which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a Codicil to his Will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(c.) A, by his Will, bequeaths to B the sum of 5,000 Rupees, and afterwards, in the same Will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 Rupees only.

(d.) A, by his Will, bequeaths to B the sum of 5,000 Rupees, and afterwards, by the same Will, bequeaths to B the sum of 6,000 Rupees. B is entitled to 11,000 Rupees.

(e.) A, by his Will, bequeaths to B 5,000 Rupees, and by a Codicil to the Will he bequeaths to him 5,000 Rupees. B is entitled to receive 10,000 Rupees.

(f.) A, by one Codicil to his Will, bequeaths to B 5,000 Rupees, and by another Codicil, bequeaths to him 6,000 Rupees. B is entitled to receive 11,000 Rupees.

(g.) A, by his Will, bequeaths "500 Rupees to B because she was his nurse," and in another part of the Will bequeaths 500 Rupees to B "because she went to England with his children." B is entitled to receive 1,000 Rupees.

(h.) A, by his Will, bequeaths to B the sum of 5,000 Rupees, and also, in another part of the Will, an annuity of 400 Rupees. B is entitled to both legacies.

(i.) A, by his Will, bequeaths to B the sum of 5,000 Rupees, and also bequeaths him the sum of 5,000 Rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 Rupees, and takes a contingent interest in another sum of 5,000 Rupees.

Constitution of residuary legatee.

LXXXIX.—A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Illustrations.

(a.) A makes her Will, consisting of several testamentary papers, in one of which are contained the following words:—"I think there will be something left, after all funeral expenses, &c., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to.' B is constituted residuary legatee.

(b.) A makes his Will, with the following passage at the end of it:—"I believe there wi

be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B constituted the residuary legatee.

(c.) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

Property to which a residuary legatee is entitled.

XC.—Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration.

A, by his Will, bequeaths certain legacies, one of which is void under the hundred and fifth Section, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his Will, A purchases a zamíndárí, which belongs to him at the time of his death. B is entitled to the two legacies and the zamíndárí as part of the residue

Time of vesting of legacy in general terms.

XCI.—If a legacy be given in general terms, without specifying the time, when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and if he dies without having received it, it shall pass to his representatives.

In what case a legacy lapses.

XCII.—If the legatee does not survive the testator the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the Will that the testator intended that it should go to some other person. In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(a.) The testator bequeaths to B "500 Rupees which B owes him." B dies before the testator; the legacy lapses.

(b.) A bequest is made to A and his children. A dies before the testator or happens to be dead when the Will is made. The legacy to A and his children lapses.

(c.) A legacy is given to A, and in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(d.) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(e.) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(f.) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

A legacy does not lapse if one of two joint legatees die before the testator.

XCIII.—If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

Effect in such a case, of words showing testator's intention that the shares should be distinct.

XCIV.—But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration.

A sum of money is bequeathed to A, B, and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

When lapsed share goes as undisposed of.

XCV.—Where the share that lapses is a part of the general residue bequeathed by the Will, that share shall go as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B, and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

When a bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

XCVI.—Where a bequest shall have been made to any child or other lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the Will.

Illustration.

A makes his Will, by which he bequeaths a sum of money to his son B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his Will whereby he bequeaths all his property to his widow D. The money goes to D.

Bequest to A for the benefit of B does not lapse by A's death in testator's lifetime.

XCVII.—Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

Survivorship in case of bequest to a described class.

XCVIII.—Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their

possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(*a.*) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the Will, leaving three children, C, D, and E. E died after date of the Will, but before the death of A, C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(*b.*) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no children. The bequest is void.

(*c.*) A lease for years of a house was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D; and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(*d.*) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the lifetime of B, C having made a Will, E having made no Will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(*e.*) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E, and the representatives of C, in equal shares.

(*f.*) A bequeaths 1,000 rupees to B for life, and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(*g.*) A bequeaths 1,000 rupees to "all the children born or to be born" of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F, and G, to the exclusion of the after-born child of B.

(*h.*) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

PART XII.

OF VOID BEQUESTS.

Bequest to a person by a particular description, who is not in existence at the testator's death.

XCIX.—Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or if he be dead, to his representatives.

Illustrations.

(a.) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator B has no son. The bequest is void.

(b.) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C Upon B's death, the legacy goes to C's son.

(c.) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son; afterwards, during the life of B, a son, named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.

(d.) A bequeaths his estate of Greenacre to B for life, and at his decease to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(e.) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator, C has no son but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entiled to the 1,000 rupees.

Bequest to a person not in existence at the testator's death, subject to a prior bequest.

C.—Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the Will, the latter bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(a.) Property is bequeathed to A for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death. A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(b.) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the tstator in the thing bequeathed. The bequest to A's daughters is valid.

(c) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that if any of them marries under the age of eighteen, her portion shall be settled so that it may belong to herself for life, and may be divisible among her children after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect in the case of each daughter who marries under eighteen, of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the

testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(*d.*) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

Rule against perpetuity.

CI.—No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations.

(*a.*) A fund is bequeathed to A for his life; and after his death to B for his life and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25, may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B, and the minority of the sons of B. The bequest after B's death is void.

(*b.*) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(*c.*) A fund is bequeathed to A for his life, and after his death to B for his life; with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18; but that if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(*d.*) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

Bequest to a class, some of whom may come under the rules in the Sections c, ci.

CII.—If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding Sections, or either of them, such bequest shall be wholly void.

Illustrations.

(*a.*) A fund is bequeathed to B for life, and after his death to all his children who shall

attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

(b.) A fund is bequeathed to A for his life, and after his death to B, C, D, and all the other children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in Illustration *(a)*. The mention of B, C, and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

Bequest to take effect on failure of bequest void under Sections c, ci, or cii.

CIII.—Where a bequest is void by reason of any of the rules contained in the three last proceeding Sections, any bequest contained in the same Will, and intended to take effect after or upon failure of such prior bequest, is also void.

Illustrations.

(a). A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son, to A. A and B survive the testator. The bequest to A is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under Section ci. The bequest to B is void.

(b). A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and if no son of A shall attain that age, to B. A and B survive the testator. The bequest to A is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under Section ci. The bequest to B is void.

Effect of direction for accumulation.

CIV.—A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immovable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death; and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(a.) The Will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal together with the accumulations, shall then be divided between A, B, and C. A, B, and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(b.) The Will directs that 10,000 rupees shall be invested, and the income accumulated until

A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(c.) The Will directs that the rents of the farm of Sultânpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

(d.) The Will directs that the rents of the farm of Sultânpur shall be accumulated for ten years, and that the accumulations shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(e.) A bequeathes a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the Will, but in consequence of B's minority.

Bequest to religious or charitable uses.

CV.—No man having a nephew or nece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a Will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the Wills of living persons.

Illustration.

A having a nephew makes a bequest by a Will not executed nor deposited as required—

For the relief of poor people;
For the maintenance of sick soldiers;
For the erection or support of a hospital;
For the education and perferment of orphans;
For the support of scholars;
For the erection or support of a school;
For the building and repairs of a bridge;
For the making of roads;
For the erection or support of a church;
For the repairs of a church;
For the benefit of ministers of religion;
For the formation or support of a public garden.
All these bequests are void.

PART XIII.

OF THE VESTING OF LEGACIES.

Date of vesting of legacy when payment or possession postponed.

CVI.—Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the Will, become vested in the legatee on the testator's death, and shall pass to the legatee's represen-

tatives if he dies before that time and without having received the legacy. And in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(*a.*) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(*b*) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(*c.*) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(*d.*) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(*e.*) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(*f.*) A fund is bequeathed to A, B, and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B, and C, subject to be devested in case A, B, and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

Date of vesting when legacy is contingent upon a specified uncertain event.

CVII.—A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens. A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible. In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the Will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit; the bequest of the fund is not contingent.

Illustrations.

(a.) A legacy is bequeathed to D in case A, B, and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B, and C all die under 18, or one of them attains that age.

(b.) A sum of money is bequeathed to A "in case he shall attain the age of 18," or, "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfiled by his attaining that age.

(c.) An estate is bequeathed to A for life, and after his death to B, if B shall then be living, but if B shall not be then living, to C. A, B, and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(d.) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(e.) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with the proviso that if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(f.) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying.

(g.) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(h.) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 Rupees to B.

(i.) A leaves his farm of Sultânpur Khurd to B, if B shall convey his own farm of Sultânpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(j.) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(k.) A fund is bequeathed to A if B shall not make any provision for him by Will. The legacy is contingent until B's death.

(l.) A bequeaths to A 500 Rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(m.) A bequeaths to A 500 Rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

Vesting of interest in a bequest to such members of a class as shall have attained a particular age.

CVIII.—Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Illustration.

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

PART XIV.

OF ONEROUS BEQUESTS.

Onerous Bequest.

CIX.—Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Illustration.

A having shares in (X), a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

One of the two separate and independent bequests to same person may be accepted, and the other refused.

CX.—Where a Will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration.

A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B, the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

PART XV.

OF CONTINGENT BEQUESTS.

Bequest contingent upon a specified uncertain event, no time being mentioned for its occurrence.

CXI.—Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustrations.

(a.) A legacy is bequeathed to A, and in case of his death, to B. If A survives the testator the legacy to B does not take effect.

(b.) A legacy is bequeathed to A and in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(c.) A legacy is bequeathed to A when and if he attains the age of 18, and in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(d.) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children," are to be understood as meaning in case B shall die without children during the lifetime of A.

(e.) A legacy is bequeathed to A for life, and after his death to B, and "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

Bequest to such of certain persons as shall be surviving at some period not specified.

CXII.—Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the Will.

Illustrations.

(a.) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(b.) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(c.) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(d.) Property is bequeathed to A for life, and after his death to B and C, with a direction that in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representatives of C.

PART XVI.

OF CONDITIONAL BEQUESTS.

Bequest upon impossible condition.

CXIII.—A bequest upon an impossible condition is void.

Illustrations.

(a.) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(b.) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the Will. The bequest is void.

Bequest upon illegal or immoral condition.

CXIV.—A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Illustrations.

(a.) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(b.) A bequeaths 5,000 rupees to his nice if she will desert her husband. The bequest is void.

Fulfilment of condition precedent to the vesting of a legacy.

CXV.—Where a Will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustrations.

(a.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(b.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(c.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(d.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(e.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the conditions.

(f.) A makes his Will, whereby he bequeaths a sum of money to A if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(g.) A legacy is bequeathed to A if he executes a certain document within a time specified in the Will. The document is executed by A, within a reasonable time, but not within the time specified in the Will. A has not performed the condition, and is not entitled to receive the legacy.

CXVI.—Where there is a bequest to one person and a bequest of the same thing to another if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Bequest to A and, on failure of the prior bequest, to B.

Illustrations.

(a.) A bequeaths a sum of money to his own children surviving him, and if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(b.) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

CXVII.—Where the Will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

Case in which the second bequest shall not take effect on failure of the first.

Illustration.

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

CXVIII.—A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or, that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person. In each case the ulterior bequest is subject to the rules contained in Sections cvii, cviii, cix, cx, cxi, cxii, cxiii, cxiv, cxvi, cxvii.

Bequest over, conditional upon the happening or not happening of a specified uncertain event.

Illustrations.

(a) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A shall die under 18.

(b.) An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a Will, the estate shall go to B. A disputes the competency of the testator to make a Will. The estate goes to B.

(c) A sum of money is bequeathed to A for life, and after his death to B, but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(d) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(e.) A bequeaths to B the interest of a fund for life, and directs the fund to be divided, at her

death, equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

Condition must be strictly fulfilled.

CXIX.—An ulterior bequest of the kind contemplated by the last preceding Section cannot take effect, unless the condition is strictly fulfilled.

Illustrations.

(a.) A legacy is bequeathed to A, with a proviso that if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(b.) A legacy is bequeathed to A, with a proviso that if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(c.) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that if A dies under 18, or marries without the consent of B, the legacy shall go to C, A marries under 18, without the consent of B. The bequest to C takes effect.

Original bequest not affected by invalidity of second.

CXX.—If the ulterior bequest be not valid, the original bequest is not affected by it.

Illustrations.

(a.) An estate is bequeathed to A for his life, with a condition superadded that if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void A retains his estate as if no condition had been inserted in the Will.

(b.) An estate is bequeathed to A for her life, and if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the Will.

(c.) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B at the date of the testator's death, had not had a son. The bequest over is void under Section xcii, and A is entitled to the estate during his life.

Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen or or not happen.

CXXI.—A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(a.) An estate is bequeathed to A for his life, with a proviso that in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood; he loses his life-interest in the estate.

(b.) An estate is bequeathed to A, provided that if he marries under the age of 25 without the consent of the executors named in the Will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(c.) An estate is bequeathed to A, provided that if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(d). An estate is bequeathed to A. with a proviso that if she becomes a Nun she shall cease to have any interest in the estate. A becomes a Nun. She loses her interest under the Will.

(e). A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that if B shall become a Nun the bequest to her shall cease to have any effect. B becomes a Nun in the lifetime of A. She thereby loses her contingent interest in the fund.

Such condition must not be invalid under Section cvii.

CXXII.—In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the one hundred and seventh Section.

Result of legatee rendering impossible or indefinitely postponing an act for which no time is specified and on the non-performance of which the subject-matter is to go over.

CXXIII.—Where a bequest is made with a condition superadded that unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect; but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations.

(a). A bequest is made to A with a proviso that unless he enters the army the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(b). A bequest is made to A with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

Performance of condition, precedent or subsequent, within specified time.

Further time allowed in case of fraud.

CXXIV.—Where the Will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect; the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

PART XVII.

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

Direction that funds be employed in a par-

CXXV.—Where a fund is bequeathed absolutely to or for the benefit of any person, but the Will contains a direction that it shall be applied

ticular manner following an absolute bequest of the same to or for the benefit of any person.

or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the Will had contained no such direction.

Illustration.

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

Direction that a mode of enjoyment of absolute bequest is to be restricted, to secure a specified benefit for the legatee.

CXXVI.—Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him, as if the Will had contained no such direction.

Illustrations.

(a.) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried, the representatives of each daughter are entitled to her share of the residue.

(b.) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

Bequest of a fund for certain purposes, some of which cannot be fulfilled.

CXXVII.—Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as had not been exhausted upon the objects contemplated by the Will, remains a part of the estate of the testator.

Illustrations.

(a.) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children; the son dies without having ever had a child. The fund after the son's death, belongs to the estate of the testator.

(b.) A bequeathes the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

PART XVIII.

OF BEQUEST TO AN EXECUTOR.

Legatee nam-

CXXVIII.—If a legacy is bequeathed to a person who is named an exe-

cutor of the Will, he shall not take the legacy unless he proves the Will or otherwise manifests an intention to act as executor.

ed as executor cannot take unless he shows intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the Will, and dies a few days after testator, without having proved the Will. A has manifested an intention to act as executor.

PART XIX.

OF SPECIFIC LEGACIES.

CXXIX.—Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Specific legacy defined.

Illustrations.

(a.) A bequeaths to B—

"The diamond ring presented to him by C."

"His gold chain."

"A certain bale of wool."

"A certain piece of cloth."

"All his household goods, which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death."

"The sum of 1,000 rupees in a certain chest."

"The debt which B owes him."

"All his bills, bonds, and securities belonging to him lying in his lodgings in Calcutta."

"All his furniture in his house in Calcutta."

"All his goods on board a certian ship then lying in the River Hooghly."

"2,000 rupees which he has in the hands of C."

"The money due to him on the bond of D."

"His mortgage on the Rampore Factory."

"One-half of the money owing to him on his mortgage of Rampore Factory."

"1,000 rupees, being part of a debt due to him from C."

"His capital Stock of 1,000*l.* in East India Stock."

"His promissory notes of the Government of India, for 10,000 rupees in their 4 per cent. loan"

"All such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company"

"All the wine which he may have in his cellar at the time of his death."

"Such of his horses as B may select."

"All his shares in the Bank of Bengal."

"All the shares in the Bank of Bengal which he may possess at the time of his death."

"All the money which he has in the 5½ per cent. loan of the Government of India."

"All the Government securities he shall be entitled to at the time of his decease."

Each of these legacies is specific.

(b.) A having Government promissory notes for 10,000 rupees, bequeaths, to his executers "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B.

(c.) A having property at Benares, and also in other places, bequeaths to B all his property at Benares.

The legacy is specific.

(d.) A bequeaths to B—
His house in Calcutta.
His zamíndárí of Rampore.
His taluk of Rámnagar.
His lease of the Indigo factory of Sulkea.
An annuity of 500 rupees out of the rents of his zamíndárí of W.
A directs his zamíndárí of X to be sold, and the proceeds to be invested for the benefit of B.
Each of these bequests is specific.

(e.) A by his will charges his zamíndárí of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamíndárí to D. Each of these bequests is specific.

(f.) A bequeaths a sum of money to buy a house in Calcutta for B.
To buy an estate in Zillah Fureedpore for B.
To buy a diamond ring for B.
To buy a horse for B.
To be invested in shares in the Bank of Bengal for B.
To be invested in Government securities for B.
A bequeaths to B—
"A diamond ring."
"A horse."
"10,000 rupees worth of Government securities."
"An annuity of 500 rupees."
"2,000 rupees to be paid in cash."
"So much money as will produce 5,000 rupees 4 per cent. Government securities."
These bequests are not specific.

(g.) A, having property in England and property in India, bequeaths a legacy to B, and direct that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England.
No one of these legacies is specific.

Bequest of a sum certain where the stocks, &c., in which it is invested are described.

CXXX.—Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds, or securities in which it is invested are described in the Will.

Illustration.

A bequeaths to B—
"10,000 rupees of his funded property."
"10,000 rupees of his property now invested in Shares of the East Indian Railway Company.
"10,000 rupees at present secured by mortgage of Rampore Factory."
No one of these legacies is specific.

Bequest of stock where the testator had at the date of his Will an equal or greater amount of his stock of the same kind.

CXXXI.—Where a bequest is made in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was at the date of his Will possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Illustration.

A bequeaths to B 5,000 rupees five per cent. Government securities. A had at the date of the Will five per cent. Government securities for 5,000 rupees.

The legacy is not specific.

CXXXII.—A money legacy is not specific merely because the Will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Bequest of money where it is not to be paid until some part of the testator's property shall have been disposed of in a certain way.

Illustration.

A bequeaths to B 10,000 rupees, and directs that this legacy shall be paid as soon as A's property in India shall be realized in England.

The legacy is not specific.

CXXXIII.—Where a Will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

When enumerated articles are not to be deemed to be specifically bequeathed.

CXXXIV.—Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Retention in form of specific bequest to several persons in succession.

Illustrations.

(a) A having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although if B lives for 15 years. C can take nothing under the bequest.

(b.) A having an annuity during the life of B, bequeaths it to C for his life, and after C's death to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

CXXXV.—Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall in the absence of any direction to the contrary be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the Will.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

Illustration.

A, having a lease for a term of years, bequeaths "all his property" to B for life, and after B's

death to C. The lease must be sold, and proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where there is a deficiency of assets to pay legacies, specific legacy not liable to abate with general legacies.

CXXXVI.—If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

PART XX.

OF DEMONSTRATIVE LEGACIES.

Demonstrative legacy defined.

CXXXVII.—Where a testator bequeaths a certain sum of money or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that where specified property is given to the legatee, the legacy is specific; where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(a.) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(b.) A bequeaths to B ten bushels of the corn which shall grow in his field of "Greenacre."

"80 chests of the Indigo which shall be made at his factory of Rampore."

"10,000 rupees out of his five per cent. promissory notes of the Government of India."

An annuity of 500 rupees "from his funded property."

"1,000 rupees out of the sum of 2,000 due to him by C."

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluk of Rámnagar.

A bequeaths to B "10,000 rupees out of his estate at Rámnagar," or charges it on his estate at Rámnagar.

"10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

CXXXVIII.—Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and so far as the residue shall be deficient, out of the general assets of the testator.

Order of payment when legacy is directed to be paid out of a fund the subject of a specific legacy.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

PART XXI.

OF ADEMPTION OF LEGACIES.

CXXXIX.—If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the Will.

Ademption explained.

Illustrations.

(a). A bequeaths to B—

"The diamond ring presented to him by C."
"His gold chain."
"A certain bale of wool."
"certain piece of cloth."
"All his household goods which shall be in or about his dwelling-house in M. Street in Calcutta at the time of his death."

A, in his lifetime,
Sells or gives away the ring.
Converts the chain into a cup.
Converts the wool into cloth.
Makes the cloth into a garment.
Takes another house into which he removes all his goods.
Each of these legacies is adeemed.

(b). A bequeaths to B—

"The sum of 1,000 rupees in a certain chest."
"All the horses in his stable."
At the death of B, no money is found in the chest, and no horses in the stable.
The legacies are adeemed.

(c). A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned.
The legacies are adeemed.

Non-ademption of demonstrative legacy.

CXL.—A demonstrative legacy is not adeemed by reason that the property on which it is charged by the Will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.

Ademption of specific bequest of right to receive something from a third party.

CXLI.—Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Illustrations.

(a). A bequeaths to B—

"The debt which C. owes him."

"2,000 rupees which he has in the hands of D."

"The money due to him on the bond of E."

"His mortgage on the Rampore Factory"

All these debts are extinguished in A's lifetime, some with and some without his consent. All the legacies are adeemed.

(b). A bequeaths to B—

"His interest in certain policies of life assurance."

A in his lifetime receives the amount of the policies. The legacy is adeemed

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

CXLII.—The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Illustration.

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

Ademption *pro tanto* by testator's receipt of portion of an entire fund of which a portion has been specifically bequeathed.

CXLIII.—If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

Order of payment where a portion of a fund is specifically bequeathed

CXLIV.—Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific

legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

to one legatee, and a legacy charged on the same fund to another, and the testator having received a portion of that fund, the remainder is insufficient to pay both legacies.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

CXLV.—Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

Illustration.

A bequeaths to B—
"His capital stock of 1,000*l* in East India Stock."
"His promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan."
A sells the stock and the notes.
The legacies are adeemed.

CXLVI.—Where stock which has been specifically bequeathed, does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

Illustration.

A bequeaths to B—
"His 10,000 rupees in the 5½ per cent. loan of the Government of India."
A sells one-half of his 10,000 rupees in the loan in question.
One-half of the legacy is adeemed.

CXLVII.—A specific bequest of goods under a description connecting them with a certain place, is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Non-ademption of specific bequest of goods described as connected with a certain place by reason of removal.

Illustrations.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

When removal of thing bequeathed does not constitute ademption.

CXLVIII.—The removal of the thing bequeathed from the place in which it is stated in the Will to be situated, does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

A bequeaths to B all the bills, bonds, and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the River Hooghly. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

When the thing bequeathed is a valuable to be received by the testator from a third person; and the testator himself or his representative, receives it.

CXLIX.—Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption; but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

Change by operation of law of subject of specific bequest between date of Will and testator's death.

CL.—Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India."

The securities for the 5½ per cent. loan are converted during A's lifetime into 5 per cent. stock.

A bequeaths to B the sum of 2,000*l.*, invested in Consols in the names of trustees for A.

The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power, under his marriage settlement, to dispose of by Will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

CLI.—Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Change of subject without testator's knowledge.

Illustration.

A bequeaths to B "all his three per cent. Consols. The Consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

CLII.—Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be re-placed, and it is re-placed accordingly, the legacy is not adeemed.

Stock specifically bequeathed, lent to a third party on condition that it shall be replaced.

CLIII.—Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

Stock specifically bequeathed, sold but replaced and belonging to the testator at his death.

PART XXII.

OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.

CLIV.—Where property specifically bequeathed is subject at the death of the testator to any pledge, lien, or incumbrance, created by the testator himself or by person under whom he claims; then, unless a contrary intention appears by the Will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance. A contrary intention shall not be inferred from any direction which the Will may contain for the payment of the testator's debts generally.

Non-liability of executor to exonerate specific legatees.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this Section.

Illustrations.

(a.) A bequeaths to B the diamond ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the estate of the testator's assets will allow them, to allow B to redeem the ring.

(b.) A bequeaths to B a zamíndárí, which at A's death is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

CLV.—Where any thing is to be done to complete testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations.

(a.) A having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(b.) A having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

Exoneration of legatee's immovable property for which land-revenue or rent is payable periodically.

CLVI.—Where there is a bequest of any interest in immovable property, in respect of which payment in the nature of land revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A bequeaths to B, a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

Exoneration of specific legatee's stock in a Joint Stock Company.

CLVII.—In the absence of any direction in the Will, where there is a specific bequest of stock in a Joint Stock Company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate; but if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(a.) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(b.) A has agreed to take 50 shares in an intended Joint Stock Company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(c.) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(d.) A bequeaths to B his shares in a Joint Stock Company. B accepts the bequest. Afterwards the affairs of the Company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(e.) A is the owner of ten shares in a Railway Company. At a meeting held during his lifetime, a call is made of 3*l.* per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

PART XXIII.

OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

Bequest of thing described in general terms.

CLVIII.—If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Illustrations.

(a.) A bequeaths to C *a* pair of carriage horses, or *a* diamond ring. The executor must provide the legatee with such articles, if the state of the assets will allow it.

(b.) A bequeaths to B "*his* pair of carriage horses." A had no carriage horses at the time of his death. The legacy fails.

PART XXIV.

OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND.

Bequest of the interest or produce of a fund.

CLIX.—Where the interest or produce of a fund is bequeathed to any person, and the Will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Illustrations.

(a.) A bequeaths to B the interest of his 5 per cent. promissory notes of the Government of

India. There is no other clause in the Will affecting those securities. B is entitled to A's 5 per cent. promissory notes of the Government of India.

(b.) A bequeaths the interest of his 5½ per cent, promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life, and C is entitled to the notes upon B's death.

(c.) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.

OF BEQUESTS OF ANNUITIES.

Annuity created by Will is payable for life only, unless a contrary intention appears by the Will.

CLX.—Where an annuity is created by Will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the Will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations.

(a.) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(b.) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(c.) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

Period of vesting where Will directs that an annuity be provided out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of an annuity.

CLXI.—Where the Will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of an annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him or to receive the money appropriated for that purpose by the Will.

Illustrations.

(a.) A by his Will directs that his executors shall out of his property purchase an annuity of 1,000 Rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(b.) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

Abatement of annuity.

CLXII.—Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the Will, the annuity shall

abate in the same proportion as the other pecuniary legacies given by the Will.

CLXIII.—Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

Where there is a gift of an annuity, and a residuary gift, the whole of the annuity to be first satisfied.

PART XXVI.

OF LEGACIES TO CREDITORS AND PORTIONERS.

CLXIV.—Where a debtor bequeaths a legacy to his creditor, and it does not appear from the Will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to amount of the debt.

Creditor *primâ facie* entitled to legacy as well as debt.

CLXV.—Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his Will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Child *primâ facie* entitled to legacy as well as portion.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

CLXVI.—No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

No ademption by subsequent provision for legatee.

Illustrations.

(a) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(b.) A bequeaths 40,000 rupees to B, his orphan niece, whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.

OF ELECTION.

CLXVII.—Where a man, by his Will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs

Circumstances in which election takes place.

shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the Will.

Devolution of interest relinquished by the owner.

CLXVIII.—The interest so relinquished shall devolve as if it had not been disposed of by the Will in favour of the legatee subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the Will.

Testator's belief as to his ownership immaterial.

CLXIX.—This rule will apply whether the testator does or does not believe that which he professes to dispose of by his Will to be his own.

Illustrations.

(a.) The farm of Sultánpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultánpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(b.) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(c.) A bequeaths to B 1,000 rupees, and to C an estate which will under a settlement belong to A if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(d.) A, a person of the age of 18 domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and subject thereto divises and bequeaths to B, "all his property, whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the Will. C may claim his legacy without giving up the real property in England.

Bequest for a man's benefit how regarded for the purpose of election.

CLXX.—A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Illustration.

The farm of Sultánpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm called Sultánpur Buzurg to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the Will or keep his farm of Sultánpur Khurd in opposition to it.

A person deriving a benefit indirectly not put to his election.

CLXXI.—A person taking no benefit directly under the Will, but deriving a benefit under it indirectly, is not put to his election.

Illustration.

The lands of Sultánpur are settled up on C for life, and after his death upon D, his only child. A bequeaths the lands of Sultánpur to B, and 1,000 rupees to C. C dies intestate, shortly after

the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the Will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultánpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultánpur in opposition to the Will.

CLXXII.—A person who in his individual capacity takes a benefit under the Will, may in another character elect to take in opposition to the Will.

A person taking under a Will in his individual capacity, may in another character elect to take in opposition to it.

Illustration.

The estate of Sultánpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultánpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the Will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the Will.

Exception to the six last Rules.—Where a particular gift is expressed in the Will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the Will, if the legatee claim that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the Will.

Illustration.

Under A's marriage settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultánpur during her life.

A by his Will bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Sultánpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

CLXXIII.—Acceptance of a benefit given by the Will constitutes an election by the legatee to take under the Will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

When acceptance of a benefit given by a Will constitutes an election to take under the Will.

Illustration.

(a.) A is owner of an estate called Sultánpur Khurd and has a life interest in another estate called Sultánpur Buzurg to which, upon his death, his son B will be absolutely entitled. The Will of A gives the estate of Sultánpur Khurd to B, and the estate of Sultánpur Buzurg to C. B, in ignorance of his own right to the estate of Sultánpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultánpur Khurd. B has not confirmed the bequest of Sultánpur Buzurg to C.

(b) B, the eldest son of A, is the possessor of an estate called Sultánpur. A bequeaths Sultánpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultánpur. He after-

wards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultánpur to C.

Presumption arising from enjoyment by legatee for two years.

CLXXIV.—Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the Will without doing any act to express dissent.

Confirmation of bequest by act of legatee.

CLXXV.—Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

When testator's representatives may call upon legatee to elect.

Effect of non-compliance with their request within a reasonable time.

CLXXVI.—If the legatee shall not, within one year after the death of the testator signify to the testator's representatives his intention to confirm or to dissent from the Will, the representatives shall, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the Will.

Postponement of election in case of disability.

CLXXVII.—In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

PART XXVIII.

OF GIFTS IN CONTEMPLATION OF DEATH.

Property transferable by gift made in contemplation of death.

When a gift is said to be made in contemplation of death.

Such gift resumable. When it fails.

CLXXVIII.—A man may dispose, by gift made in contemplation of death, of any movable property which he could dispose of by Will. A gift is said to be made in contemplation of death where a man who is ill and expects to die shortly of his illness, delivers to another the possession of any movable property to keep as a gift in case the donor shall die of that illness. Such a gift may be resumed by the giver. It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

Illustrations.

(a.) A being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

A watch.

A bond granted by C to A.

A Bank Note.
A promissory note of the Government of India endorsed in blank.
A Bill of Exchange endorsed in blank.
Certain mortgage deeds.
A dies of the illness during which he delivered these articles.
B is entitled to—
The watch.
The debt secured by C's bond.
The Bank Note.
The promissory note of the Government of India.
The Bill of Exchange.
The money secured by the mortgage deed.

(b.) A being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(c.) A being ill and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character and property of executor or administrator as such.

CLXXIX.—The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Administration with copy annexed of authenticated copy of Will proved abroad.

CLXXX.—When a Will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate to be granted to executor appointed by Will.

CLXXXI.—Probate can be granted only to an executor appointed by the Will.

Appointment express or implied.

CLXXXII.—The appointment may be express or by necessary implication.

Illustrations.

(a.) A wills that C be his executor if B will not; B is appointed executor by implication.

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c.) A appoints several persons, executors of his Will and Codicils, and his nephew residuary

legatee, and in another Codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my Will and Codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

CLXXXIII.—Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Grant of probate to several executors simultaneously or at different times.

CLXXXIV.—When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's Will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

Separate probate of Codicil discovered after grant of probate.

Procedure when different executors are appointed by the Codicil.

CLXXXV.—If a Codicil be discovered after the grant of probate, a separate probate of that Codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the Will. If different executors are appointed by the Codicil, the probate of the Will must be revoked, and a new probate granted of the Will and the Codicil together.

Accrual of representation to surviving executor.

CLXXXVI.—When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

No right as executor or legatee can be established, unless probate or letters of administration shall have been granted by a competent Court.

CLXXXVII.—No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jursdiction within the province shall have granted probate of the Will under which the right is claimed, or shall have granted letters of administration under the one hundred and eightieth Section.

Probate establishes the Will from testator's death.

CLXXXVIII.—Probate of a Will when granted establishes the Will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Persons to whom letters of administration may not be granted.

CLXXXIX.—Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

No right to intestate's property can be established, unless administration previously granted by a competent Court.

CXC.—No right to any part of the property of a person who has died intestate can be establised in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

CXCI.—Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

From what period letters of administration entitle administrator to intestate's rights

CXCII.—Letters of administration do no render valid any intermediate acts of the administrator, tending to the diminution or damage of the intestate's estate.

Acts of administrator not validated by letters of administration.

CXCIII.—When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship; except that when one or more of several executors have proved a Will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Grant of administration where executor has not renounced.

Exception.

CXCIV.—The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the Will appointing him executor.

Form and effect of renunciation of executorship.

CXCV.—If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the Will may be proved and letters of administration with a copy of the Will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within the time limited.

CXCVI.—When the deceased has made a Will, but has not appointed an executor, or when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the Will, or when the executor dies after having proved the Will but before he has administered all the estate of the deceased; an universal or a residuary legatee may be admitted to prove the Will, and letters of adminstration with the Will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Grant of administration to universal or residuary legatee.

CXCVII.—When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the Will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee.

CXCVIII.—When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the Will, and letters of administration may be granted to him or them accordingly.

Grant of administration when there is no executor, nor residuary legatee, nor representative of such legatee.

Citation to be used before grant of administration to any legatee other than universal or residuary.

CXCIX.—Letters of administration with the Will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next of kin to accept or refuse letters of administration.

Order in which connections by marriage or consanguinity are entitled to administration.

CC.—When the deceased has died intestate, those who are connected with him either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

Administration to be granted to widow unless Court see cause to exclude her.

CCI.—If the deceased has left a widow, administration shall be granted to the widow unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Illustrations.

(a) The widow is a lunatic, or has commited adultery, or has been barred by her marriage settlement of all interest in her husband's estate; there is cause for excluding her from the administration.

(b) The widow has married again since the decease of her husband; this is not good cause for her exclusion.

Persons associated with widow in administration.

CCII.—If the Judge think proper, he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration if there were no widow.

Grant of administration where no widow, or widow excluded.

Proviso.

CCIII.—If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate; provided that when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

Deceased's kindred of equal degree, equally entitled to administration.

CCIV.—Those who stand in equal degree of kindred to the deceased, are equally entitled to administration.

Right of widower to administration of wife's estate.

CCV.—The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

Grant of administration to a creditor.

CCVI.—When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration and willing to act, they may be granted to a creditor.

Where deceased has left property in British India, administration must be granted according to the foregoing rules.

CCVII.—Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to estate and intestate succession differs from the law of British India.

PART XXX.

OF LIMITED GRANTS.

(a.) Grants Limited in Duration.

Probate of copy or draft of lost Will.

CCVIII.—When the Will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the Will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed Will.

CCIX.—When the Will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

CCX.—When the Will is in the possession of a person residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the Will or an authenticated copy of it be produced.

Administration until the Will be produced.

CCXI.—Where no Will of the deceased is forthcoming, but there is reason to believe that there is a Will in existence, letters of administration may be granted, limited until the Will, or an authenticated copy of it be produced.

(b.) Grants for the Use and Benefit of others having Right.

Administration, with the Will annexed, to Attorney of an absent executor.

CCXII.—When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration, with the Will annexed, may be granted to the Attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration, with the Will annexed, to Attorney of an absent person, who, if present, would be entitled to administer.

CCXIII.—When any person to whom, if present, letters of administration, with the Will annexed, might be granted, is absent from the Province, letters of administration, with the Will annexed, may be granted to his Attorney, limited as above-mentioned.

Administration to Attorney of absent person entitled to administer in case of intestacy.

CCXIV.—When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the Attorney of the absent person, limited as before-mentioned.

Administration during minority.

CCXV.—When a minor is sole executor or sole residuary legatee letters of administration, with the Will annexed, may be granted to the legal guardian of such minor or to such other person as the Court shall think fit until the minor shall have completed the age of eighteen years, at which period and not before, probate of the Will shall be granted to him.

Administration until one of several minor executors or residuary legatees attains majority.

CCXVI.—When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

Administration for use and benefit of lunatic *jus habens.*

CCXVII.—If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestate's estates, be a lunatic, letters of administration, with or without the Will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall come of sound mind.

Administration *pendente lite.*

CCXVIII.—Pending any suit touching the validity of the Will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appiont an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court, and shall act under its direction.

(c.) For Special Purposes.

Probate limited to purpose specified in the Will.

CCXIX.—If an executor be appointed for any limited purpose specified in the Will, the probate shall be limited to that purpose, and if he should appoint an Attorney to take administration on his behalf, the letters of administration, with the Will annexed, shall accordingly be limited.

Administration with the Will annexed limited to a particular purpose.

CCXX.—If an executor appointed generally give an authority to an attorney to prove a Will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the Will annexed shall be limited accordingly.

Administration limited to property in which a person has a beneficial interest.

CCXXI.—Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

CCXXII.—When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to a suit.

CCXXIII.—If at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to the purpose of becoming a party to a suit to be brought against administrator.

CCXXIV.—In any case in which it may appear necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate, may grant to any person whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Administration limited to collection and preservation of deceased's property.

CCXXV.—When a person has died intestate, or leaving a Will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the Province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who under ordinary circumstances would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator, and in every such case letters of administration may be limited or not as the Judge shall think fit.

Appointment as administrator, of person other than the one who under ordinary circumstances would be entitled to administration.

(d.) Grants with Exception.

CCXXVI.—Whenever the nature of the case requires that an exception be made, probate of a Will, or letters of administration with the Will annexed, shall be granted subject to such exception.

Probate or administration with the Will annexed, subject to exception.

CCXXVII.—Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Administration with exception.

(e.) Grants of the Rest.

Probate or administration of the rest.

CCXXVIII.—Whenever a grant, with exception, of probate or letters of administration, with or without the Will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f.) Grants of Effects unadministered.

Grant of effects unadministered.

CCXXIX.—If the executor to whom probate has been granted have died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

CCXXX.—In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when a limited grant has expired, and there is still some part of the estate unadministered.

CCXXXI.—When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

(g.) Alteration in Grants.

What errors may be rectified by the Court.

CCXXXII.—Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where Codicil discovered after grant of administration with Will annexed.

CCXXXIII.—If, after the grant of letters of administration with the Will annexed, a Codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

(h.) Revocation of Grants.

Revocation or annulment for just cause, of grant of probate or administration.

"Just cause."

CCXXXIV.—The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.—Just cause is—1st, that the proceedings to obtain the grant were defective in substance; 2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; 3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; 4th, that the grant has become useless and inoperative through circumstances.

Illustrations.

(a.) The Court by which the grant was made had no jurisdiction.

(b.) The grant was made without citing parties who ought to have been cited.

(c.) The Will of which probate was obtained was forged or revoked.

(d.) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e.) A has taken administration to the estate of B as if he had died intestate, but a Will has since been discovered.

(f.) Since probate was granted, a later Will has been discovered.

(g.) Since probate was granted, a Codicil has been discovered, which revokes or adds to the appointment of executors under the Will.

(h.) The person to whom probate was or letters of administration were granted has subsequently become of unsound mind.

PART XXXI.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates and letters of administration.

CCXXXV.—The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his District.

District Judge's powers as to the granting of probate and administration.

CCXXXVI.—The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any Civil suit or proceeding depending in his Court.

District Judge may order any person to produce testamentary papers.

CCXXXVII.—The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same, and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default, and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in rela-

CCXXXVIII.—The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except

tion to probate and administration.

as hereinafter otherwise provided, be regulated so far as the circumstances of the case will admit by the Code of Civil Procedure.

When and how District Judge is to interfere for the protection of property.

CCXXXIX.—Until probate be granted of the Will of a deceased person, or an administrator of his estate be constituted, the District Judge within whose jurisdiction any part of the property of the deceased person is situate, is authorized and required to interfere for the protection of such property, at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

Probate or administration may be granted by District Judge, when testator or intestate at his death had a fixed dwelling or any property within the jurisdiction.

CCXL.—Probate of the Will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the Judge.

When application is made to the Judge of a District in which the deceased had no fixed abode.

CCXLI.—When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another District, or where the application is for letters of administration, to grant them absolutely or limited to the property within his own jurisdiction.

Conclusiveness of probate or letters of administration.

CCXLII.—Probate or letters of administration shall have effect over all the property and estate, movable or immovable, of the deceased, throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

Conclusiveness of application for probate or administration, if properly made and verified.

CCXLIII.—The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached, by reason that the testator or intestate had no fixed place of abode, or no property within the District at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for probate.

CCXLIV.—Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the Will annexed, and stating the time of the testator's death, that the writing annexed is his last Will and testament, that it was duly executed, and that the petitioner is the executor there-

in named; and in addition to these particulars when the application is to the District Judge, the petition shall further state that the deceased at the time of his death had his fixed place of abode, or had some property, movable or immovable, situate within the jurisdiction of the Judge.

In what cases translation of Will to be annexed to the petition.

Verification of translation made by any person other than the Court translator.

CCXLV.—In cases wherein the Will is written in any language other than English or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or if the Will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—"I (A B) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

CCXLVI.—Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating the time and place of the deceased's death, the family or other relatives of the deceased, and their respective residences, the right in which the petitioner claims, that the deceased left some property within the jurisdiction of the District Judge to whom the application is made, and the amount of assets which are likely to come to the petitioner's hands.

Petition for probate or letters of administration to be signed and verified.

CCXLVII.—The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I *(A B)*, the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate, by one of the witnesses to the Will.

CCXLVIII.—Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the Will (when procurable), in the manner or to the effect following:—

"I *(C D)*, one of the witnesses to the last Will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature *(or* mark) thereto *(as the case may be)*, *(or* that the said testator acknowledged the writing annexed to the above petition to be his last Will and testament in my presence.)"

Punishment for making false averment in petition or declaration.

CCXLIX.—If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge

CCL.—In all cases it shall be lawful for the District Judge, if he shall

may examine petitioner in person and require further evidence, and issue citations to inspect the proceedings.

think proper, to examine the petitioner in person, upon oath or solemn affirmation, and also to require further evidence of the due execution of the Will, or the right of the petitioner to the letters of administration, as the case may be, and to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge issuing the same may direct.

Publication of citation.

Caveat against grant of probate or administration.

CCLI.—Caveats against the grant of probate or administration may be lodged with the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to any other Judge to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

CCLII.—The caveat shall be to the following effect:—"Let nothing be done in the matter of the estate of A B, late of , deceased, who died on the day of at without notice to C D of "

After entry of caveat, no proceeding to be taken on the petition until after notice to the caveator.

CCLIII.—No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge to whom the application has been made, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

Grant of probate to be under seal of the Court.

CCLIV.—When it shall appear to the Judge that probate of a Will should be granted, he will grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, Judge of the District of hereby make known that on the day of in the year the last Will of late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his Will, was granted to the executor in the said Will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of a year next ensuing, and also to render a true account thereof."

Grant of letters of administration to be under seal of Court.

CCLV.—And wherever it shall appear to the District Judge that letters of administration to the estate of a person deceased, with or without a copy of the Will annexed, should be granted, he will grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, , Judge of the District of hereby make known that on the day of letters of administration (with *or* without the Will annexed, *as the case may be)* of the

property and credits of , late of , deceased, were granted to , the father *(or as the case may be)* of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of one year next ensuing, and also to render a true account thereof."

Administration-bond.

CCLVI.—Every person to whom any grant of administration shall be committed shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge shall from time to time by any general or special order direct.

Assignment of administration-bond

CCLVII.—The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Probate not to be granted until after seven days, and letters of administration until after fourteen days from the testator's or intestate's death.

CCLVIII.—No probate of a Will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days from the day of the testator or intestate's death.

Filing of original Wills of which probate or letters of administration with Will annexed have been granted.

CCLIX.—Every District Judge shall file and preserve all original Wills of which probate or letters of administration with the Will annexed may be granted by him among the records of his Court, until some public registry for Wills is established; and the Local Government shall make regulations for the preservation and inspection of the Wills so filed as aforesaid.

Grantee of probate or letters of administration shall alone have power to sue, &c., until the same shall have been revoked.

CCLX.—After any grant of probate or letters of administration no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

CCLXI.—In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be

the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or letters of administration revoked.

Right of such executor or administrator to recoup himself for payments.

CCLXII.—Where any probate is or letters of administration are revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him, which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Appeals from orders made by District Judge under powers conferred by this Act.

CCLXIII.—Every order made by a District Judge by virtue of the powers hereby conferred upon him, shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Concurrent jurisdiction of High Court.

CCLXIV.—The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

PART XXXII.

OF EXECUTORS OF THEIR OWN WRONG.

Executor of his own wrong.

CCLXV.—A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Exceptions. First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another, does not make an executor of his own wrong.

Illustrations.

(a.) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(b.) A having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(c.) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

CCLXVI.—When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

Liability of an executor of his own wrong.

PART XXXIII.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

CCLXVII.—An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

In respect of causes of action surviving the deceased, and rents due at the time of his death.

CCLXVIII.—All demands whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Demands and rights of action in favour of or against deceased, survive to and against his executor or administrator.

Illustrations.

(a.) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(b.) A sues for divorce. A dies. The cause of action does not survive to his representative.

CCLXIX.—An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

Power of executor or administrator to dispose of deceased's property.

Illustrations.

(a.) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(b.) The executor, in the exercise of his discretion, mortgages a part of the immovable estate of the deceased. The mortgage is valid.

CCLXX.—If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Purchase by executor or administrator of deceased's property.

CCLXXI.—When there are several executors or administrators the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the Will or taken out administration.

Powers of several executors or administrators, exercisable by one.

Illustrations.

(a.) One of several executors has power to release a debt due to the deceased.

(b.) One has power to surrender a lease.

(c.) One has power to sell the property of the deceased, movable or immovable.

(d.) One has power to assent to a legacy.

(e.) One has power to endorse a promissory note payable to the deceased.

(f.) The Will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

CCLXXII.—Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

Powers of administrator of effects unadministered.

CCLXXIII.—The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

CCLXXIV.—An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

CCLXXV.—When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

PART XXXIV.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

As to deceased's funeral.

CCLXXVI.—It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

CCLXXVII.—An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same may have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall, in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that may have come to his hands, and the manner in which they have been applied or disposed of.

CCLXXVIII.—The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Duty of executor or administrator as to property of, and debts owing to, the deceased.

CCLXXIX.—Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

CCLXXX.—The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

CCLXXXI.—Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan, or domestic servant are next to be paid, and then the other debts of the deceased.

Wages for certain services to be next paid and then the other debts.

CCLXXXII.—Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account. But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Save as aforesaid, all debts to be paid equally and rateably.

CCLXXXIII.—If the domicile of the deceased was not in British India, the application of his movable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled.

Application of movable property to payment of debts, where the deceased's domicile was not in British India.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving movable property to the value of 10,000 Rupees, immovable sproperty to the value of 5,000 Rupees, debts on instruments under seal to the amount of 10,000 Rupees, and debts on instruments not under seal to the same amount. The debts on the instruments under seal are to be paid in full out of the movable estate, and the proceeds of the immovable estate are to be applied as far as they will extend towards the discharge of the debts not under seal. Accordingly, one-half of the amount of the debts not under seal is to be paid out of the proceeds of the immovable estate.

CCLXXXIV.—No creditor who has received payment of a part of his debt by virtue of the last preceding Section shall be entitled to share in the proceeds of the immovable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Creditor paid in part under Section 283 to bring such payment into account before sharing in proceeds of immovable property.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving movable property to the value of 5,000 Rupees, and immovable property to the value of 10,000 Rupees, debts on instruments under seal to the amount of 10,000

Rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the movable estate. The proceeds of the immovable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 Rupees, which are to be distributed rateably amongst all the creditors without distinction in proportion to the amount which may remain due to them.

Debts to be paid before legacies.

CCLXXXV.—Debts of every description must be paid before any legacy.

Executor or administrator not bound to pay legacies without indemnity.

CCLXXXVI.—If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general legacies.

Executor not pay one legatee in preference to another.

CCLXXXVII.—If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions, and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Non-abatement of specific legacy when assets sufficient to pay debts.

CCLXXXVIII.—Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Right under demonstrative legacy, when the assets are sufficient to pay debts and necessary expenses.

CCLXXXIX.—Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Rateable abatement of specific legacies.

CCXC.—If the assets are not sufficient to answer the debts and the specific legacies an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

A has bequeathed to B a diamond ring, valued at 500 Rupees, and to C, a horse, valued at 1,000 Rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 Rupees. Of this sum Rupees 333-5-4 are to be paid to B, and Rupees 666-10-8 to C.

Legacies treated as general for purpose of abatement.

CCXCI.—For the purpose of abatement, a legacy for life, a sum appropriated by the Will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

PART XXXV.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

CCXCII.—The assent of the executor is necessary to complete a legatee's title to his legacy.

Executor's assent necessary to complete legatee's title.

Illustrations.

(a.) A by his Will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b.) A by his Will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

CCXCIII.—The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way. This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Effect of executor's assent to a specific legacy.

Assent may be verbal, and either express or implied.

Illustrations.

(a.) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b.) The interest of a fund is directed by the Will to be applied for the maintenance of the legatee during his minority. The executor commneces so to apply it. This is an assent to the whole of the bequest.

(c.) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d.) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e.) A person to whom a specific article has been bequeathed, takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

CCXCIV.—The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(a.) A bequeaths to B his lands of Sultánpur, which, at the date of the Will, and at the death of A, were subject to a mortgage for 10,000 Rupees. The executor assents to the bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b.) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of executor to his own legacy.

Implied assent.

CCXCV.—When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied. Assent shall be implied if in his manner of administering the property he does, any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Assent of executor gives effect to legacy from testator's death.

CCXCVI.—The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a.) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b.) A bequeaths 1,000 Rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor not bound to pay or deliver legacies until after one year from testator's death.

CCXCVII.—An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his Will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

PART XXXVI.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

Commencement of annuity when no time fixed by Will.

CCXCVIII.—Where an annuity is given by the Will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

When payment of annuity to be paid quarterly or monthly first falls due.

CCXCIX.—Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

CCC.—Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the Will authorizes the first payment to be made; and if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Dates of successive payments when first payment of an annuity directed to be made within a given time, or on a day certain.

Apportionment where annuitant dies between times of payment.

PART XXXVII.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

CCCI.—Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where a legacy, not specific, is given for life.

CCCII.—Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding Section. The intermediate interest shall form part of the residue of the testator's estate.

Investment of amount of general legacy, to be paid at a future time.

Intermediate interest.

CCCIII.—Where an annuity is given and no fund is charged with its payment or appropriated by the Will to answer it, a Government annuity of the specified amount shall be purchased, or, if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

Procedure when no fund is charged with or appropriated to an annuity.

CCCIV.—Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee of amount of contingent bequest.

CCCV.—Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court may for the time being regard as good securities, shall be converted into money and invested in such securities.

Investment of residuebequeathed to a person for life, without direction to invest in particular securities.

CCCVI.—Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Investment of residuebequeathed to a person for life, with direction to invest in specified securities.

Time and manner of the conversion and investment.

Interest payable until investment.

CCCVII.—Such conversion and investment as are contemplated by the two last preceding Sections shall be made at such times and in such manner as the executor shall in his discretion think fit; and until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Procedure where minor is entitled to immediate payment or possession of bequest, and there is no direction to pay to any person on his behalf.

CCCVIII.—Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the Will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom the probate was or letters of administration with the Will annexed were granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and if the legatee be a ward of the Court of Wards the legacy shall be paid into that Court to his account, and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid; and such money when paid in shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

PART XXXVIII.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee of a specific legacy entitled to produce thereof from testator's death.

CCCIX.—The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a.) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b.) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c.) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

CCCX.—The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Residuary legatee entitled to produce of residuary fund from testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(a.) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b.) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

CCCXI.—Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Interest when no time is fixed for payment of a general legacy.

Exceptions. (1.)—Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2.)—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3.)—Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

CCCXII.—Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Interest when time has been fixed.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the Will for maintenance.

CCCXIII.—The rate of interest shall be four per cent. per annum.

Rate of interest.

CCCXIV.—No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the

No interest payable on arrears of annuity

within first year after testator's death.

expiration of that year may have been fixed by the Will for making the first payment of the annuity.

Interest payable on sum to be invested to produce annuity.

CCCXV.—Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

PART XXXIX.

OF THE REFUNDING OF LEGACIES.

Refund of legacy paid under Judge's orders.

CCCXVI.—When an executor has paid a legacy under the order of a Judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

No refund if legacy paid voluntarily.

CCCXVII.—When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

Refund when legacy has become due on performance of a condition within further time allowed under Section cxxiv.

CCCXVIII.—When the time prescribed by the Will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under the one hundred and twenty-fourth Section, for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

When each legatee is compellable to refund in proportion.

CCCXIX.—When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets.

CCCXX.—Where an executor or administrator has given such notices as would have been given by the High Court in an administration suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution; but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

Within what period a creditor may call upon a

CCCXXI.—A creditor who has not received payment of his debt may, within two years after the death of the testator, or one year after the legacy has been paid, call upon a legatee who has received payment of his legacy

to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies; and whether the payment of the legacy by the executor was voluntary or not.

legatee to refund.

CCCXXII.—If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding Section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When a legatee who has not received payment or who has been compelled to refund under Section cccxxi., cannot oblige one who has received payment in full to refund.

CCCXXIII.—If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When an unsatisfied legatee must first proceed against executor, if solvent.

CCCXXIV.—The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to the refunding of one legatee to another.

Illustration.

A has bequeathed 240 Rupees to B, 480 Rupees to C, and 720 Rupees to D. The assets are only 1,200 Rupees, and if properly administered would give 200 Rupees to B, 400 Rupees to C, and 600 Rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 Rupees, and D to refund 120 Rupees.

CCCXXV.—The refunding shall in all cases be without interest.

Refunding to be without interest.

CCCXXVI.—The surplus or residue of the deceased's property after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the Will.

Residue of the deceased's property after usual payments to be paid to residuary legatee.

PART XL.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

CCCXXVII.—When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

Illustrations.

(a.) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(b.) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(c.) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

For neglect to get in any part of the deceased's property.

CCCXXVIII.—When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(b.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.

MISCELLANEOUS.

Stamps and fees on instruments mentioned in this Act.

CCCXXIX.—For every instrument or writing of any of the kinds specified in the Schedule to this Act, and which shall be made or executed after the commencement of this Act, there shall be payable to Government a Stamp duty or fee of the amount indicated in the said Schedule.

Saving of rights, duties, and privileges of Administrator General.

CCCXXX.—Nothing contained in this Act shall be deemed or taken to supersede or affect the rights, duties, and privileges of the Administrators General and Officiating Administrators General of Bengal, Madras and Bombay respectively, under or by virtue of Act VIII. of 1855 *(to amend the law relating to the office and duties of Administrator General)*, Act XXVI. of 1860 *(to amend Act VIII. of* 1855*)*, The Regimental Debts Act, 1863, and the Administrator General's Act, 1865; and its shall be the duty of the Magistrate or other chief officer charged with the executive administration of a district or place in criminal matters, whenever any person to whom the provisions of this Act shall apply shall die within the limits of his jurisdiction, to report the circumstances without delay to the Administrator General of the Province, retaining the property under his charge until letters of administration shall have been obtained by that officer or by some other person, when the property is to be delivered over to the person obtaining such letters, or who may obtain probate of the Will (if any) of the deceased.

Succession to property of Hindús, Muhammadans or

CCCXXXI.—The provisions of this Act shall not apply to Intestate or Testamentary succession to the property of any Hindú, Muhammadan or Buddhist; nor shall they apply to any Will made, or any intestacy occurring before

the first day of January 1866 The fourth Section shall not apply to any marriage contracted before the same day.

Buddhists and certain Wills, intestacies and marriages not affected by this Act.

CCCXXXII.—The Governor-General of India in Council shall from time to time have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act the members of any race, sect or tribe in British India or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order. The Governor-General of India in Council shall also have power from time to time to revoke such order, but not so that the revocations shall have any retrospective effect. All orders and revocations made under this Section shall be published in the *Gazette of India*.

Power of Governor-General to exempt any race, sect or tribe in British India from the operation of this Act.

SCHEDULE.

Stamps.

		Stamps.			
Petition for probate or letters of administration where the value of the estate exceeds Rs. 500,	...	Rs.	10	0	0
Ditto where the value of the estate is less than Rs. 500,	...	Re.	1	0	0
Probate or letters of administration,	...	Rs.	8	0	0
Caveat,	...	Rs.	4	0	0
Citation,	...	Re.	1	0	0
All petitions other than those above mentioned,	...	Re.	1	0	0
Inventory,	...	Re.	1	0	0
Administration-bond,	...	Rs.	8	0	0

FEE.

Translations by the Court Translator or by order of the Court, per folio of ninety words,	...	Rs.	2	0	0

ACT XXI. OF 1870.

(Received the assent of the Governor-General on the 19th July 1870.)

An Act to regulate the Wills of Hindús, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay.

Preamble.

Whereas it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation and probate of the wills of Hindús, Jainas, Sikhs and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay; It is hereby enacted as follows:—

Short title.

I.—This Act may be called "The Hindú Wills' Act, 1870."

Certain portions of Succession Act extended to Wills of Hindús, Jainas, Sikhs and Buddhists.

II.—The following portions of the Indian Succession Act X., 1865, namely,—

Sections xlvi., xlviii., xlix., l., li., lv. and lvii. to lxxvii. (both inclusive),

Sections lxxxii., lxxxiii., lxxxv., lxxxviii. to ciii. (both inclusive),

Sections cvi. to clxxvii. (both inclusive),

Sections clxxix. to clxxxix. (both inclusive),

Sections cxci. to cxcix. (both inclusive),

so much of Parts XXX. and XXXI. as relates to grants of probate and letters of administration with the Will annexed, and

Parts XXXIII. to XL. (both inclusive), so far as they relate to an executor and an administrator with the Will annexed,

shall, notwithstanding anything contained in Section cccxxxi. of the said Act, apply—

Extent of Act.

(a) to all Wills and Codicils made by any Hindú, Jaina, Sikh or Buddhist, on or after the first day of September one thousand eight hundred and seventy, within the said territories or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such Wills and Codicils made outside those territories and limits, so far as relates to immovable property situate within those territories or limits:

Provisos.

III.—Provided that marriage shall not revoke any such Will or Codicil:

And that nothing herein contained shall authorize a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for Section ii. of this Act, he could not deprive them by Will :

And that nothing herein contained shall vest in the executor or administrator with the Will annexed of a deceased person any property which such person could not have alienated *inter vivos* :

And that nothing herein contained shall affect any law of adoption or intestate succession :

And that nothing herein contained shall authorise any Hindú, Jaina, Sikh or Buddhist to create in property any interest which he could not have created before the first day of September one thousand eight hundred and seventy.

Partial repeal of Bengal Regulation V. of 1799, section ii.

IV.—On and from that day, Section ii. of Bengal Regulation V. of 1799 shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant-Governor of Bengal.

Saving of rights of Administrator General.

V.—Nothing contained in this Act shall affect the rights, duties and privileges of the Administrators General of Bengal, Madras and Bombay, respectively.

Interpretation-clause.

VI.—In this Act and in the said Sections and Parts of the Indian Succession Act, all words defined in Section iii. of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said Section iii. has attached to such words respectively :

And in applying Sections lxii., lxiii., xcii., xcvi., xcviii., xcix., c., ci., cii., ciii. and clxxxii. of the said Succession Act, to Wills and Codicils made under this Act, the words "son," "sons," "child" and "children" shall be deemed to include an adopted child; and the word "grandchildren" shall be deemed to include the children, whether adopted or natural-born, of a child whether adopted or natural-born ; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son :

And in making grants under this Act, of letters of administration with the Will annexed or with a copy of the Will annexed, Section cxcv. of the said Succession Act shall be construed as if the words "and in case the Hindú Wills' Act had not been passed" were added thereto; and Section cxcviii. of the said Succession Act shall be construed as if, after the word "intestate," the words "and the Hindú Wills' Act had not been passed" were inserted ; and Sections ccxxx. and ccxxxi. of the said Succession Act shall be construed as if the words "if the Hindú Wills' Act had not been passed" were added thereto, respectively.

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